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SECTION H SPECIAL CONTRACT REQUIREMENTS

H.1 CLAUSE MATRIX

A clause matrix is provided in Section J attachment 39.

H.2 AWARD TERM INCENTIVE

H.2.1 INTRODUCTION

The purpose of the award term incentive is to motivate and reward superior Contractor effort toward implementation of the Integrated Deepwater System including proposals for award term implementation for future task and/or delivery orders that will be required beyond the base contract performance period of five years. The Contractor may earn contract award term incentives as determined by the Award Term Determining Official (ATDO). The five adjustments of up to five years each will result in a total contract period of not more than 30 years.

H.2.2 MONITORING OF PERFORMANCE

The Government will continuously monitor the Contractor's performance. Results will be reported to the Award Term Evaluation Board (ATEB). The ATEB will recommend an award term to the ATDO who makes the final decision of the award term amount based on the Contractor's performance during the award term evaluation period. The ADTO will unilaterally decide whether or not the Contractor has earned an award term extension.

H.2.3 AWARD TERM PLAN

The award term evaluation process, categories, criteria and standards are specified in the award term plan, Attachment J-30. The evaluation periods are also specified in the award term plan.

H.2.4 CHANGES TO THE AWARD TERM PLAN

Either the Contractor or the Government may initiate changes to the award term plan. Bilateral changes may be made to the award term plan at any time during contract performance. The Government may make unilateral changes to the award term plan before the beginning of a new award term evaluation period. Such changes to the award term plan will be provided at least 30 days prior to the start of the new evaluation period. Such changes shall not entitle the Contractor to any equitable adjustments or to any other compensation.

H.2.5 CANCELLATION AND TERMINATION OF AWARD TERMS

Award terms are conditioned upon:

- the Government's continuing need of the contracted supplies and services,
- the availability of funds, and
- continuing price reasonableness of the Contractor's supplies and services.

If these conditions do not exist at the time an earned award term begins, the Government may cancel the award term incentive. In such a case, the cancellation will not entitle the Contractor to any settlement under termination or to any other compensation.

The Contractor may also elect to cancel the award term incentive at any time and thereby end its right to earn award terms. The Contractor may also cancel an earned award term before it begins by giving written notice to the Contracting Officer at least one year in advance.

The Government retains the right to terminate the Contract for its convenience or for default.

H.3 PERFORMANCE INCENTIVES

In addition to the overarching award term incentive, the Government believes there may be value in offering additional performance incentives motivating superior effort on specific task and delivery orders, assets or system performance attributes. The Government intends to use performance incentives to motivate the Contractor to achieve the following objectives:

- Exceed proposed IDS performance with respect to the Coast Guard program objectives of maximized operational effectiveness and minimized total ownership cost.
- Constructively and promptly respond to the inevitable changes in IDS mission requirements, demand and environment, funding profiles, and implementation schedules.
- Maximize customer/user satisfaction with IDS assets, capabilities and services.

However, the Government does not anticipate offering asset specific performance incentives in the first year of the contract. Furthermore, the variety and complexity of the work required under this contract compounded by the differing approaches taken by the three potential Offerors preclude effective specification of such specific incentive clauses prior to contract award.

The major performance incentive anticipated for the first year is an award fee for Systems Integration and Management (CLIN 0001). The award fee plan for this CLIN is provided in attachment J-14. Performance metrics for the Systems Integration and Management award fee determination in subsequent years (CLINs 0002-0005) will be based on the Performance Measurement Plan.

- The Government proposes the following for consideration following contract award. The Contractor may participate on an incentive oversight team that the Government will establish within 180 days following contract award. Using the Performance Measurement Plan described in H.24, the team will develop a framework to link contractor performance to IDS operational effectiveness and total ownership cost. A corresponding plan for performance, value engineering, and “share-in-savings” incentives may be developed to incentivize superior performance with respect to measurable asset and/or system capability/availability metrics that strongly impact IDS operational effectiveness and total ownership cost.

H.4 PARTNERING AGREEMENT

The Contractor and the Government shall execute, within 6 months after contract award, a partnering agreement. The purpose of a partnering agreement is to build an environment that

encourages open communication and fosters the achievement of mutual goals. The partnering agreement shall address how the parties plan to identify and solve problems, and how the parties plan to anticipate and avoid claims and disputes. All parties will attempt to resolve disputes through the least litigious manner, including alternative dispute resolution.

H.5 SPECIFICATIONS AND STANDARDS

H.5.1 DEFINITIONS

A “zero-tier reference” is either: (1) a specification, standard, or drawing that is cited in the order (including its attachments), or (2) the drawings or standards listed in this subparagraph:

[to be specified at task or delivery order award]

A “first-tier reference” is either: (1) a specification, standard, or drawing cited in a zero-tier reference, or (2) a specification cited in a first-tier drawing.

H.5.2 REQUIREMENTS

All zero-tier and first-tier references, as defined above, and unless otherwise limited, are mandatory for use.

All lower tier references in Government specifications and standards shall be used for guidance only.

All tiers of reference in non-Government standards, which are cited in an order, are mandatory for use. This applies to military specifications and standards that are lower-tier references in the cited non-Government standards.

H.6 UPDATING SPECIFICATIONS AND STANDARDS

If, during the performance of a Task or Delivery Order, the Contractor believes that any order contains outdated or different versions of any specifications or standards, the Contractor may request that all of its orders be updated to include the current version of the applicable specification or standard. Updating shall not affect the form, fit, or function of any deliverable item or increase the cost/price of the item to the Government. The Contractor should submit update requests to the Contracting Officer with copies to the cognizant COTR representative for approval. The Contractor shall perform the order in accordance with the existing specifications and standards until notified of approval/disapproval by the Contracting Officer. Any approved alternate specifications or standards will be incorporated into the order.

H.7 GOVERNMENT PRODUCTION SURVEILLANCE AND CONTRACT QUALITY ASSURANCE OF SUBCONTRACTED SUPPLIES AND SERVICES

It is anticipated that the Prime Contractor, who is responsible to the Government for timely and satisfactory performance of all requirements, will enter into one or more subcontracts hereunder for construction, assembly, and testing of IDS assets, equipment and for other, related complex and/or critical subcontract supplies and services.

The supplies to be furnished under an order and by subcontractors have quality characteristics, not wholly visible in the end item, for which contractual conformance must be established progressively during purchasing, manufacturing, performance, assembly, and functional operation, either as an individual item or in conjunction with other items. This being the case, the Government may maintain such production surveillance (consistent with FAR Part 42.11) of the Contractor's performance at Contractor and at the subcontractor's facilities; and at such other subcontractor, vendor, and supplier facilities and sites as the Government deems necessary to protect its interests hereunder. The Government will monitor Subcontractor progress and identify to the Prime Contractor any factors noted that may impede, degrade, delay, and/or significantly increase the cost of performing all or any part of an order. To this end, the Government may review and/or analyze Subcontractor performance plans, schedules, controls, and industrial processes, as well as the Subcontractor's actual performance under same.

Government contract quality assurance, consistent with FAR Part 46 (including but not limited to inspection at source), may be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants, yards, and facilities) as may be necessary to determine that the supplies and services to be furnished hereunder conform to all applicable order and specification requirements.

Government contract quality assurance on subcontracted supplies and services (consistent with FAR Subpart 46.405) may be performed as specified in each task order as the Government deems necessary to protect its interest hereunder and to assist in determining whether subcontracted supplies and services conform to all applicable order and specification requirements.

Government contract quality assurance (consistent with FAR Subpart 46.402,), including inspection of supplies and/or services required to be furnished hereunder, may be performed at source (including at subcontractors' plants, yards, and facilities) if: performance at any other place would require uneconomical disassembly or destructive testing; considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary corrections; special required instruments, gauges, or facilities are available only at source; performance at any other place would destroy or require replacement of costly special packing and packaging; Government inspection during order performance is essential; or it is determined for other reasons to be in the Government's interest.

Government contract quality assurance (consistent with FAR Subpart 46.403), including inspection of supplies and/or services required to be furnished hereunder shall be performed at destination (including at subcontractors' plants, yards, and facilities), if: such supplies and/or services require no technical inspection; necessary testing equipment is located only at destination; the order requires or permits delivery of such supplies for acceptance by the

H.7 GOVERNMENT PRODUCTION SURVEILLANCE AND CONTRACT QUALITY ASSURANCE OF SUBCONTRACTED SUPPLIES AND SERVICES (continued)

Government at destination; the order requires or permits performance of such services at destination; or it is determined for other reasons to be in the Government's interest.

The Government shall conduct production surveillance and perform Government contract quality assurance actions (including but not limited to inspections and tests) under an order in a manner that will not unduly delay the Contractor's work.

Any and all Government actions, Government inaction, or Government conduct in connection with such Government production surveillance and Government contract quality assurance are for the benefit of the Government. The Government assumes no contractual obligation to conduct any production surveillance or perform any order quality assurance action(s) (including but not limited to inspection and/or testing) for the benefit of the Contractor, nor shall the Government's conduct of production surveillance and/or performance of contract quality assurance actions be construed as relieving the Contractor from any duty or obligation imposed by, under, or in connection with, any requirement of an order.

Neither Government production surveillance nor Government contract quality assurance actions performed at the subcontract level, as provided in this clause, shall be construed as affecting the contractual relationship between the Contractor and the Government, or between the Contractor and any subcontractor, vendor, or supplier of the Contractor; establishing a contractual relationship between the Government and any subcontractor, supplier, or vendor of the Contractor; or constituting a waiver of the Government's right to accept or reject supplies and/or services to be furnished under an order.

Should the Subcontractor consider that any Government action, Government inaction, or Government conduct in connection with such Government production surveillance and/or Government contract quality assurance has or may effect a change in the order that has not been identified as such in writing and signed by the Contracting Officer, the Subcontractor shall promptly notify the Prime Contractor who will then notify the Government of same, in writing, as required under the clause of this order entitled, "Notification of Changes."

As used in this provision:

"The Contractor's work," "the Contractor's performance," and "supplies and/or services to be furnished by the Contractor hereunder" shall be construed as including any and all subcontracted work, subcontracted performance, and subcontracted supplies and/or services necessary and/or required for order performance.

Notwithstanding the above:

- (a) The Contractor is and shall remain responsible to the Government hereunder for timely order performance, conforming to all applicable order requirements, and for managing order performance, including but not limited to planning, placing, and administering subcontracts, as necessary, to ensure the lowest overall cost and technical risk to the Government;
- (b) The Contractor is and shall remain responsible to the Government hereunder for performing or having performed all inspections and tests necessary to substantiate

- (c) that the supplies or services furnished under an order conform to order requirements, including any applicable technical requirements; and
- (d) Nothing in this provision shall be construed as relieving the Contractor of any duty or obligation imposed by, under, or in connection with an order, including but not limited to the Contractor's obligation to control the quality of supplies and/or services required to be furnished hereunder; tender to the Government for acceptance only those supplies and/or services that conform to order requirements; ensure that vendors and/or suppliers of raw materials, parts, components, subassemblies, etc., have an acceptable quality control system; and maintain substantiating evidence that the supplies and/or services required to be furnished hereunder conform to applicable order quality requirements, and furnishing information to the Government, as required hereunder. Government production surveillance and/or Government contract quality assurance actions performed at the subcontract level, as provided in this clause, shall not be construed as affecting the contractual relationship between the Contractor and the Government, or between the Contractor and any subcontractor, vendor, or supplier; establishing a contractual relationship between the Government and any subcontractor, supplier, or vendor of the Contractor; or constituting a waiver of the Government's right to accept or reject supplies and/or services to be furnished by the Contractor under an order.

H.8 AWARD TERM PERIOD PRICE DEFINITIZATION

The Contractor shall submit an award term period price proposal covering each CLIN in the award period and cost or pricing data supporting its proposal. For appropriate portions of the proposal, the Contractor may submit a written request for exception from submitting cost or pricing data by submitting the information described in FAR 52.215-20.

The schedule for definitizing award terms is:

Submission of proposal: 24 months before the end of the current award term period.

Beginning of Negotiations: 18 months before the end of the current award term period.

Agreement on Firm Pricing: 16 months before the end of the current award term period.

The proposed prices will be forward-priced to a date fifteen months before the end of the current award term period. The prices agreed to by the parties will likewise be forward-priced to that time period. The total of the negotiated prices may not exceed the NTE amount for the award term. Pre-determined U.S. Bureau of Labor Statistic (BLS) indexes will be used to adjust the prices to March 2002 for comparison with the NTE amount.

Co-incident with the task and/or delivery order planning and development process described in Attachment J-7, the price of the CLIN will be further adjusted for intervening escalation in accordance with the following.

- (a) If the CLIN is covered by EPA, it will be escalated by the BLS indexes to the order issuance date.

- (b) If the CLIN is not EPA-covered, it will be escalated by the BLS indexes to the order issuance date and then extrapolated by mutual agreement of the parties to the midpoint of performance.

H.9 INFORMATION AND DATA FURNISHED BY THE GOVERNMENT

H.9.1 ORDER SPECIFICATIONS

The Government will furnish, if not included as an attachment to the order, any unique order specifications set forth in Section C and its attachments.

H.9.2 CONTRACT DRAWINGS AND DATA

The Government will furnish contract drawings, design agent drawings, ship construction drawings, and/or other design or alteration data cited or referenced in Section C, *its attachments*, or in the order specification as mandatory for use or for order performance.

H.9.3 GOVERNMENT-FURNISHED INFORMATION (GFI)

GFI is defined as that information essential for the installation, test, operation, maintain and interface support of all Government-furnished material (GFM) enumerated on in or as an attachment to the delivery order as applicable. The Government shall furnish only the GFI identified as applicable, in the delivery order. The GFI furnished to the Contractor need not be in any particular format. However, the Government will make a reasonable attempt to deliver GFI in a mutually agreed upon format. Further, the Government reserves the right to revise the listing of GFI in or as an attachment to the delivery order as applicable, as follows:

- (a) The Contracting Officer may at any time by written order:
 - (1) Delete, supersede, or revise, in whole or in part, data listed or specifically referenced in the delivery order or as an attachment to the delivery order; or
 - (2) Add items of data or information to the delivery order or as an attachment to the delivery order, as applicable; or
 - (3) Establish or revise due dates for items of data or information in the delivery order or as an attachment to the delivery order, as applicable.
- (b) "In the event that the Contractor encounters difficulties or delays in obtaining data or information on GFE, GFI, or Government-specified legacy items which the Contractor needs to carry out its responsibilities under this contract, then the Government, upon the Contractor's written request, shall provide reasonable assistance to the Contractor to obtain such information/data in a timely manner at no charge to the Contractor."
- (c) If any action taken by the Contracting Officer pursuant to subparagraph (a) immediately above causes an increase or decrease in the costs of, or the time required for, performance of any part of the work under an order, an equitable adjustment shall be made in the order price and delivery schedule in accordance with the procedures provided for in the clause of an order entitled "*CHANGES--FIXED-PRICE*" (*FAR*

52.243-1). or "CHANGES COST REIMBURSEMENT " (FAR(52 243-2) depending on the order type.

H.9.4 DATA NOT SPECIFIED, NOT FURNISHED BY GOVERNMENT

Except for the Government information and data specified by paragraphs H.9.1 through H.9.3 above, the Government will not be obligated to furnish the Contractor any specification, standard, drawing, technical documentation, or other publication, notwithstanding anything to the contrary in the order specifications, the GFI listed in the delivery order or as an attachment to the delivery order, as applicable, the clause of an order entitled "GOVERNMENT PROPERTY (FIXED-PRICE)" (FAR 52.245-2), "GOVERNMENT PROPERTY COST REIMBURSEMENT, TIME AND MATERIAL OR LABOR HOUR CONTRACT" (FAR 52.245-5) depending on the order type or any other term or condition of an order.

H.9.5 REFERENCED DOCUMENTATION

The Government will not be obligated to furnish Government specifications and standards, including Navy and/or Coast Guards standard and type drawings and other technical documentation, which are referenced directly or indirectly in the order specifications set forth in Section C and its attachments and which are applicable to an order as specifications. Such referenced documentation may be obtained from:

Department of Defense Standards:

<http://astimage.daps.dla.mil/online.>>

Coast Guard Standards

Commandant (G-S/CIT)
2100 2nd St., SW
Washington, DC 20593-0001

Commercial specifications and standards, which may be referenced in the order specification or any sub-tier specification or standard, are not available from Government sources and should be obtained from the publishers.

H.10 ASSIGNMENT AND USE OF NATIONAL STOCK NUMBER (NSN)

To the extent that NSNs or preliminary NSNs are assigned by the Government for the identification of parts, pieces, items, subassemblies, or assemblies to be furnished under an order, the Contractor shall use such NSNs or preliminary NSNs in the preparation of provisioning lists, package labels, packing lists, shipping containers, and shipping documents as required by applicable specifications, standards or data item descriptions (DIDs) of the order or as required by orders for spare and repair parts. The cognizant Government Contract Administration Office will be responsible for providing the Contractor such NSNs or preliminary NSNs, which may be assigned and which are not already in possession of the Contractor.

H.11 CONTRACT PROBLEM IDENTIFICATION REPORTS

Contract Problem Identification Reports (CPIRs) shall be used by the Contractor for the purpose of alerting the Government to actual or potential order problems and of establishing an early dialogue between the Contractor and the Government with regard thereto.

A "contract problem" is a fact or circumstance of which the Contractor is aware that does, will, or is reasonably anticipated to have a significant or substantial impact on the delivery schedule or completion of order performance or the cost of performance of the order (increase or decrease). The terms "significant" and "substantial" shall be interpreted in the same manner as they would be interpreted by a reasonably prudent businessperson under the relevant circumstances.

The Contractor shall report each order problem promptly and in no event later than 10 calendar days after the Contractor identifies such order problem. A written CPIR shall be transmitted to the Contracting Officer and to the cognizant COTR. Each CPIR shall be entitled "Contract Problem Identification Report," shall be dated, numbered sequentially and shall set forth the following based on the best and most complete information then known or available to the Contractor:

- (a) The nature of the order problem;
- (b) The date on which the order problem arose and the date on which the order problem was identified as such;
- (c) The anticipated direct and consequential effects of the order problem upon the delivery schedule or completion of order performance or the cost of performance of the order;
- (d) Identification of the supplies and/or services which are or may be affected; and
- (e) The Contractor's recommended solution to the reported order problem.

Follow-up status reports of each order problem, identified by the original CPIR number, shall be furnished monthly or more frequently as required by the Contracting Officer. A final follow-up report shall be furnished immediately following resolution of each order problem.

CPIRs shall not be submitted when notice of the same order problem is required to be furnished to the Government pursuant to any other requirement of an order. The submission of a CPIR, however, does not relieve the Contractor of its obligations to provide notice required under any other requirement of an order.

H.12 REGULATORY BODIES, STANDARDS, CERTIFICATIONS AND DATA REQUIREMENTS

Assets as delivered shall comply with all the applicable laws of the United States and the requirements of the various regulatory bodies and rules, in issue on date of delivery order, and as identified in the Asset Specification(s). All necessary certifications or documents that cover the approval and indicate compliance shall be obtained by the Contractor. Data necessary for the Contractor to obtain the required certifications, classification, or statements of voluntary compliance shall also be provided. Additionally, the Contractor shall accomplish all work

necessary to comply with those applicable laws of the United States, the requirements of the various regulatory bodies and imposed rules. Copies of all correspondence between the Contractor and regulatory bodies shall be provided to the COTR.

Before delivery of any asset, the original certificates/documents demonstrating approval by regulatory bodies or indicating compliance with the order shall be mounted as required or directed by the COTR.

The Contractor in all other cases shall provide data to the Government as required by the Order Data Requirements List, attached to the Task or Delivery Order.

H.13 PERMITS AND RESPONSIBILITIES

The Contractor shall be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, state, and municipal laws, codes, and regulations applicable to the performance of work required under an order issued under this contract, including the movement over the public highways of overweight/over-dimensional materials.

H.14 PLANS AND OTHER DATA

Whenever the Government shall so require, the Contractor shall, at the cost of reproduction, furnish to whosoever may be designated by the Government, after the execution of a non disclosure of proprietary data agreement with the Government and adequate assurances regarding the protection of proprietary data, copies of analyses, working plans (including reproduces), selected record plans, indices, material schedules, plan schedules, purchase specifications and other data relating to the construction of the IDS and its assets in the media specified by the Government. The furnishing of such data shall not constitute any guaranty or warranty, either express or implied, by the Contractor other than that they are correct copies of such data.

H.15 PLANT PROTECTION

The Contractor shall provide for its plant and the work in process under an order such safeguards, including personnel, devices, and equipment, as would constitute reasonable protection under peacetime conditions (in the light of the size of the plant and the scope of its operations) against all hazards, including unauthorized entry, malicious mischief, theft, vandalism, fire, and flooding.

In addition to the foregoing precautions, the Contractor shall provide such additional safeguards as may be required or approved by the Contracting Officer for the protection of its plant and the work in process under an order against espionage, sabotage, and enemy action. The cost to the Contractor of all safeguards so required or approved shall, to the extent allocable to an order, be reimbursed to the Contractor pursuant to a change order issued under the clause of an order entitled "CHANGES--FIXED-PRICE" (FAR 52.243-1) or "CHANGES--COST-REIMBURSEMENT" (FAR 52.243-2), as applicable. Such cost shall not include any allowance on account of overhead expense, except shop overhead charges incident to the construction or installation of such devices or equipment.

Upon payment by the Government of the cost to the Contractor of any device or equipment required or approved above, title thereto shall vest in the Government, and the Contractor shall comply with the instructions of the Contracting Officer respecting the identification and

disposition thereof. No part or item of any such devices or equipment shall be or become a fixture by reason of affixation to any realty not owned by the Government.

H.16 PERFORMANCE BONDS

The Government reserves the right to require performance bonds upon issuance of a Delivery Order.

H.17 CURRENT CONTRACT DELIVERY DATE

Delivery dates will be definitized in each task or delivery order.

H.18 RECOGNITION OF ELECTRONIC DELIVERABLES

Data required to be delivered under the CDRL of an order, that would be deemed technical data under the clause, Rights in Technical Data – Noncommercial Items if it were delivered in written form, shall not lose its status as technical data because access by the Government, or delivery by the Contractor, is by electronic means. The rights of the parties in said technical data shall be as specified in the clause Rights in Technical Data – Noncommercial Items.

H.19 CONTRACTOR RESPONSIBILITY FOR DESIGN AND CONSTRUCTION

In as much as the asset performance specifications, functional designs, and Order Statements of Work were prepared and developed by the Contractor, the Contractor assumes the responsibility for their completeness, thoroughness, and adequacy for designing and constructing the assets meeting the requirements flow down from the System Performance Specification based upon which the Contractor's specifications were proposed. In the event there are any errors or omissions in the order specifications, or in the accompanying plans that affect the detail design and construction of the assets comprising the performance of the asset as part of the IDS, the Contractor shall correct such errors or omissions as a part of the order work up to final acceptance of the Asset with no increase in order price.

Any inquiries or comments made or not made by the Government in its review/evaluation of the Contractor's specifications and functional design and Statement of Work upon which an order is awarded shall not relieve the Contractor of the responsibilities described above.

H.20 TOTAL SYSTEM INTEGRATION RESPONSIBILITY

This clause specifies the Contractor's responsibility for the total integration of the IDS.

- (a) Total System Integration Responsibility (TSIR) is the responsibility to integrate all IDS assets (including subsystems, components and CFP/GFP) to maximize operational effectiveness of the total IDS in accordance with the requirements of the IDS System Performance Specification (Attachment J-1). The Contractor accepts TSIR for the IDS. It shall install and integrate all systems, subsystems and components without any degradation of performance below legacy level and the overall end state performance level as defined by the baseline.
- (b) TSIR applies to all IDS systems (including subsystems, components, CFP and GFP) whether assembled by the Contractor or subcontractor, provided as GFP or contractor

acquired. Support equipment, including both Contractor and government-furnished is an integral part of the assets and systems.

- (c) The determination of performance TSIR derives from an integrated assessment of compliance with requirements of all contract baseline documents in Section J. TSIR does not excuse the Contractor from compliance with any individual requirements.
- (d) Both parties recognize that IDS exists in a dynamic operational environment. Therefore, they expect the baseline documents and the requirements encompassed within them to evolve in response to that volatility.
- (e) This clause does not purport to hold the Contractor responsible for system performance manifestly beyond its control, e.g., employment of IDS assets by the Coast Guard contrary to Contractor Concept of Operations as part of its inherent governmental function, funding reductions, variations in Coast Guard missions and/or composition of IDS assets by appropriate Government authority. However, the Contractor is responsible for TSIR based on revised baseline documents that incorporate these types of changes.

H.21 WARRANTY OF SUPPLIES OF A COMPLEX NATURE

This clause is provided in accordance with Transportation Acquisition Regulation (TAR) 48 CFR 1246.703. The use of warranties in the procurement of major systems by the USCG is mandatory, unless waived (see USCG guidance at (TAR 48 CFR 1246.792).

- (a) Definitions. "Acceptance," as used in this clause, means the execution of the Acceptance Block and signing of a DD Form 250 by an authorized Government representative.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end items furnished by the Contractor and related parts, equipment or components required under this contract. The word does not include "data."

- (b) Contractor's obligations.
 - (1) The Contractor warrants that for 1 year, from the date of acceptance, all supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract; provided, however, that with respect to Government-furnished property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.
 - (2) Any supplies corrected or furnished in replacement shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph b.(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

H.21 WARRANTY OF SUPPLIES OF A COMPLEX NATURE (continued)

- (3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer, in writing, of the non-availability.
 - (4) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price. If preferred by the Contractor, new drawings may be prepared.
 - (5) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.
 - (6) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.
 - (7) The Contractor agrees that the supplies furnished under this contract shall be covered by the most favorable warranties the Contractor gives to any customer for such supplies. The Contractor agrees that any commercial warranties for supplies, commercial components of supplies, granted by the original equipment manufacturer shall be transferred to the USCG.
 - (8) The Contractor shall establish and maintain a warranty item correction program to ensure that all Contractor responsible warranty defects are corrected in an expeditious manner. A Warranty Representative shall be provided as necessary to:
 - (i) Act as the principal point of contact between the Contractor and the Government during the warranty period.
 - (ii) Coordinate asset visits by vendor representatives and accomplishment of industrial work locally to correct warranty defects.
 - (iii) Conduct visits to the asset as required to gain familiarity with scope and nature of the warranty defects and ensure satisfactory completion of such items.
 - (iv) Conduct liaison with Government Warranty Officer to ensure that corrective actions are satisfactory and signed-off by the Government Warranty Officer.
- (c) Remedies available to the Government.
- (1) In the event of a breach of the Contractor's warranty in paragraph b.(1) of this clause, the Government may, at no increase in contract price—

H.21 WARRANTY OF SUPPLIES OF A COMPLEX NATURE (continued)

- (i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or non-conforming supplies; or
 - (ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.
- (2) If the Contracting Officer does not require correction or replacement of defective or non-conforming supplies or the Contractor is not obligated to correct or replace under paragraph b.(3) of this clause, the Government shall be entitled to an equitable reduction in the contract price.
- (3) The Contracting Officer shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within 15 days after discovery of the breach. The Contractor will have 15 days to act upon the breach. "Act upon" means to have placed orders for all necessary parts and to have scheduled repairs at the earliest ship availability within the specified number of calendar days after receipt of direction. If the last day is not a workday, it extends over to the next workday. After the notice of breach, but not later than 5 days after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, direct correction or replacement as in paragraph c.(1) of this clause, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Contractor did not breach the warranty in paragraph b.(1) of this clause, the contract price will be equitably adjusted.
- (4) In cases where a warrantable defect may reasonably prevent an asset from performing a mission, the Contracting Officer shall notify the Contractor within 3 working days with a statement as to when performance is required so as to avoid or minimize mission impact. The Contractor shall correct the defect within whatever time period is required so that the mission is not impacted, or notify the Contracting Officer within 2 working days that it cannot perform within the stated time. If the Contractor is not able to correct the deficiency to prevent mission impact, the Government may elect to correct the defect on its own and seek equitable adjustment of the contract price from the Contractor. Prior to seeking equitable adjustment of the contract price, the government shall provide necessary invoices or proof of cost data to the Contractor. In addition, the warranty period may be extended as per paragraph b.(3) if the asset is unavailable for a mission.
- (5) In matters of extreme urgency, where immediate and definite response and correction of defects is required to maintain safety, prevent imminent further deterioration or damage, or meet urgent operational requirements, the Government may take action to correct the deficiency on its own without prior notification to the Contractor. In these cases the Contracting Officer shall notify the Contractor of the Government's action within 3 working days. Prior to seeking equitable adjustment of the contract price, the government shall provide

- (6) necessary invoices or proof of cost data to the Contractor.
 - (i) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph c.(3) of this clause shall be 25 days from the furnishing or return by the Contractor to the Government of the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for 25 days thereafter. If installation is not feasible within 25 days of furnishing or return, the Contracting Officer, by written notice, may extend this period to 5 days after installation.
 - (ii) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the Contract.

H.22 ECONOMIC PRICE ADJUSTMENT (EPA)

(a) General

- (1) Economic price adjustment provisions shall apply to all firm-fixed price and fixed-price incentive CLINs marked with an asterisk in Section B.
- (2) The contract prices agreed to by the parties reflect the price levels of the base periods identified in paragraph d below. It is anticipated that the Contractor's actual costs may vary from the price levels of the base periods and the parties desire to provide for adjustment to reflect such variations. However, regardless of the actual variations in the cost experienced during the period of performance, adjustments because of such variations shall be computed and effected in accordance with the procedures specified herein.
- (3) For the purpose of this clause, "Post Delivery Date"(PDD) is defined as a date three months after the contractual delivery date of the CLIN/subCLIN as set forth in Task/Delivery orders. Also for the purpose of this clause, a "monthly period" or "monthly period involved" shall mean the Contractor's normal accounting month.

- (b) Pricing of Changes. The costs subject to adjustment under this clause include the costs of performance of changes or other work for which the contract price is subject to equitable adjustment pursuant to the "CHANGES" clause or pursuant to other provisions of the contract. Accordingly, equitable adjustments to the contract price for the CLINs/subCLINs subject to economic price adjustment shall be determined on the basis of actual and/or projected direct material costs, direct labor costs, and indirect costs, de-escalated to price levels of the base periods identified in paragraph d below. The method of de-escalation shall be the same as that set forth in paragraph e for determining economic price adjustments.

- (c) Costs Subject to Economic Price Adjustment.

H.22 ECONOMIC PRICE ADJUSTMENT (EPA) (continued)

- (1) The intent of this clause is to provide for the monthly determination of economic price adjustments for each CLIN/subCLIN, on an individual CLIN/subCLIN basis. For payment, these monthly costs shall be submitted on a quarterly basis, as described elsewhere in this clause, for development of a Supplemental Agreement. Upon execution of the Supplemental Agreement stating the amount of the economic price adjustment, the Contractor may submit an invoice for the amount (if positive), subject to the provisions of this clause. Furthermore, it is the intent of this clause to end economic price adjustment in the monthly period in which the Post Delivery Date occurs, or when the cumulative sum of the costs for the CLIN/subCLIN reaches the price set forth in the contract (procedures defined below), whichever occurs first.
- (2) For the purpose of this clause, the total allowable costs in the following categories shall be subject to economic price adjustment:
 - (i) Selected employee benefits:
 - (A) FICA (indirect costs).
 - (B) State and Federal Workmen's Compensation (indirect costs).
 - (C) Unemployment Compensation (indirect costs).
 - (D) Disability (indirect costs).
 - (E) Federally Mandated National Health Program (indirect costs).
 - (F) Federally Mandated changes to hours of work per week or per day and changes to the payment of overtime (indirect and direct costs).
 - (ii) One hundred percent of the imputed cost of facilities capital (indirect cost).
 - (iii) One hundred percent of direct labor costs.
 - (iv) One hundred percent of direct material costs.
 - (v) One hundred percent of other direct costs
 - (vi) Ninety-five percent of indirect costs other than indirect costs in c(2)(i), and c(2)(ii) above.
- (3) Within 30 days after the end of each quarterly period with respect to the CLIN(s)/subCLIN(s) within each CLIN, the Contractor shall submit to the Government: (i) a certified statement of the costs incurred for the CLIN(s)/subCLIN(s) within the CLINs during the three months (monthly costs) comprising the quarterly period, and (ii) a certified statement of the total cumulative costs incurred for the CLIN(s)/subCLIN(s) within the CLINs from the effective date of the contract to the end of that quarterly period (total costs). The quarterly statement shall separately identify the direct material costs, the direct labor costs, the other direct costs, and the indirect costs for each month,

H.22 ECONOMIC PRICE ADJUSTMENT (EPA) (continued)

and as a quarterly total. With respect to indirect costs, the statement of monthly costs shall state separately from all other indirect costs (i) the monthly incurred selected employee benefit costs of the type identified in subparagraph c(2)(i) above, (ii) the monthly imputed cost of facilities capital allocated to the CLIN/subCLIN, and (iii) the ninety-five percent of indirect costs subject to economic price adjustment. Periodic recomputation of indices may be necessary for instances as described in subparagraphs d(3) and d(4). In such cases when the applicable index for the monthly period involved has been made available or revised, the economic price adjustment for that monthly period shall be recomputed on the basis of the more recent Bureau of Labor Statistics (BLS) index, if different from the index previously used by the Contractor. The Contractor shall be required annually (April) to review the most recent BLS indices available and consolidate any such Economic Price Adjustment revisions. Any additional payment to or repayment by the Contractor required by the net amount of such recomputations for the period shall be reflected annually along with the Economic Price Adjustment computations submitted each April. The period for which the recomputations shall be applied is defined as the effective date of the contract to the end of the most recent month for which applicable BLS indices are available at the time of the annual review. There shall be a final recomputation submitted after the PDD to adjust all revised BLS indices. The period for the final recomputation shall cover the effective date of the contract to the end of the PDD. Submission of the final recomputation should occur within one month of the date for which applicable BLS indices covering this entire period are made available to the Contractor. There shall be no Economic Price Adjustment allowed nor any revisions to Economic Price Adjustment allowed for any purpose after the PDD.

- (4) The monthly selected employee benefit costs for the CLIN/subCLIN shall be the product obtained by multiplying the total selected employee benefit costs of the type identified in subparagraph (c)(2)(i) above by the amount of total overhead dollars, excluding the imputed cost of facilities capital, allocated to the CLIN/subCLIN for the monthly period involved and the product shall be divided by total overhead dollars, excluding the imputed cost of facilities capital, for the monthly period involved.
- (5) For the purpose of this clause:
 - (i) "Direct material cost" means any material cost that can be identified specifically with a final cost objective (e.g. a particular contract). "Direct labor cost" means any labor cost that can be identified specifically with a final cost objective (e.g. a particular contract). "Other direct costs" means any direct costs that can be identified specifically with a final cost objective (e.g. a particular contract) and that are not classified as material or labor.
 - (ii) "Indirect costs" shall have the meaning set forth in Part 31 of the Federal Acquisition Regulation in effect on 15 June 2001.
 - (iii) "Monthly costs," and "total costs" shall include only "incurred costs" and "allowable costs" which shall also have the meaning set forth in Part 31 of

H.22 ECONOMIC PRICE ADJUSTMENT (EPA) (continued)

the Federal Acquisition Regulation in effect on 15 June 2001, except that "incurred costs" for material shall include the full amounts of all billings received from vendors during the monthly period involved irrespective of whether the Contractor has paid the full amount of such billings. Further, on this contract, the imputed cost of facilities capital shall be treated as an "incurred indirect cost."

- (6) The costs identified in this paragraph c. shall be subject to audit and inspection by the Contracting Officer.

(d) Cost Indices.

- (1) The indices that will apply to an asset class (e.g. the National Security Cutter) will be established at the time the order for the first asset in that class is placed. They will be determined by mutual agreement of the parties from the series of Producer Price Indexes and from the Employment Cost Index published by the United States Bureau of Labor Statistics.
- (2) In the event that any of the specified indices for the monthly period involved are unavailable to the Contractor at the close of a quarterly period, economic price adjustments pursuant to this clause shall be based upon the average monthly changes in the applicable indices for the previous four (4) months for which indices are available. The average of changes so calculated shall be added to the applicable index for the immediately preceding monthly period and the sum shall constitute the index for the monthly period involved. When the applicable index for the monthly period involved has been made available, the economic price adjustment for that monthly period shall be recomputed on the basis of such index in accordance with subparagraph c(3).
- (3) In the event that any of the specified indices for any base period or any monthly period differs from the index previously available for that period, the economic price adjustment for the applicable monthly period(s) shall be recomputed on the basis of such revised index and any additional payment to or repayment by the Contractor required by such recomputation for that monthly period(s) shall be accomplished in accordance with subparagraph c(3).
- (4) The Contractor shall be responsible for the calculations involving indices provided for in this paragraph, and said calculations shall be subject to verification and audit by the Government.
- (5) For the purpose of computing economic price adjustments under this clause, the base period index values (subject to adjustment as specified in subparagraph d(4) above) are those final published values for March 2002.
- (6) In the event that the Bureau of Labor Statistics discontinues determining an index agreed upon by the parties pursuant to paragraph (d) above, the parties shall mutually agree upon another index.
- (7) In the event that the Bureau of Labor Statistics alters its methods of calculating an index agreed upon by the parties pursuant to paragraph (d) above, appropriate

H.22 ECONOMIC PRICE ADJUSTMENT (EPA) (continued)

adjustments in the affected index shall be agreed upon by the parties, to put it on a comparable basis with the index as calculated before the change.

- (8) In the event that the Bureau of Labor Statistics changes its method of publication of an index agreed upon by the parties pursuant to paragraph (d) above, but does not change its method of computing the index, the Contracting Officer will notify the Contractor of the revised method of publication. A change in agency responsibility for this index shall be considered to be a change in method of publication, and not a change in the method of computation.

(e) Computation of Economic Price Adjustment.

- (1) For the purpose of computing economic price adjustments under this clause, the following computations shall be used for all the categories of cost specified in subparagraph c(2). For each monthly period commencing prior to the Post Delivery Date of the CLIN/subCLIN, the amount of the applicable category of cost for the CLIN/subCLIN certified on the quarterly statement of monthly costs for that monthly period shall be multiplied by the difference between the value of the applicable index for that monthly period and the applicable base period index described in subparagraph d(6) above, and the product thereof shall be divided by the value of the applicable index for that monthly period and the result, the economic price adjustment for the applicable category of cost, shall be expressed to the nearest dollar. The calculation is as follows:

$$\frac{\begin{array}{l} \text{(Current} \\ \text{(Month} \\ \text{(Index} \end{array} \quad \begin{array}{l} \text{Base)} \\ \text{- Period)} \\ \text{Index)} \end{array} \quad \begin{array}{l} \text{Current} \\ \text{X Month} \\ \text{Cost} \end{array}}{\text{Current Month Index}} = \text{Economic Price Adjustment}$$

- (2) For any monthly period commencing subsequent to the Post Delivery Date of the CLIN/subCLIN, there shall be no economic price adjustment. In the event and to the extent that the contract delivery date for the CLIN/subCLIN is subsequently extended by contract modification, the Post Delivery Date for the CLIN/subCLIN shall be extended on a day-for-day basis. The Contractor shall submit such documentation necessary, in the same format as described herein, to be compensated for such extension of the CLIN/subCLIN contract delivery date.
- (3) For each monthly period commencing prior to the contractual delivery date of the CLIN(s)/subCLIN(s), the economic price adjustments computed above for all categories of cost for the CLIN(s)/subCLIN(s) shall be totaled and subtracted from the Total Monthly Cost for the CLIN/subCLIN, and the resulting difference shall constitute the Base Cost for the CLIN/subCLIN for that monthly period. No adjustment for economic price adjustment under this clause shall be made in the event that the cumulative sum of the "Base Costs" of the CLIN/subCLIN for all preceding monthly periods exceeds the price set forth in the contract; provided, further, that in the event the contract price thereafter is increased by modification to this contract, adjustment for economic price adjustment under this clause shall be made for each monthly period that the cumulative sum of the

H.22 ECONOMIC PRICE ADJUSTMENT (EPA) (continued)

Base Costs for the asset for all preceding monthly periods does not exceed such increased contract price.

- (4) No adjustment for economic price adjustment under this clause shall be made for any monthly period for any CLIN(s)/subCLIN(s) in the event that the specified indices for the monthly period involved are unavailable solely as a result of the failure by the Contractor to submit timely, accurate, and complete information to the BLS necessary for their calculation of the indices. Any amount withheld under the provisions of this paragraph shall be released following the Contractor's submission of such information.
 - (5) The amount of adjustment in compensation for the CLIN(s)/subCLIN(s) determined as above (plus or minus) shall be set forth separately in a Supplemental Agreement to this contract, which also shall set forth the computation upon which each adjustment in compensation is based. The separate CLIN(s) established in the contract are for purposes of recording the initial and subsequent Supplemental Agreements. The Government also reserves the right to obligate advance amounts for payment of economic price adjustments, without regard to the cumulative sum of previous Supplemental Agreements, in order to satisfy budgetary constraints.
 - (6) In the event that any amount shown in any Supplemental Agreement pursuant to paragraph e in respect to the CLIN/subCLIN is a minus figure, such amount shall be deducted from any invoice(s) presented for payment under any requirement of this contract until such amount has been offset or recouped in full.
- (f) Payment of Economic Price Adjustment.
- (1) Payments of amounts of economic price adjustment under this clause shall be made for the CLIN(s)/subCLIN(s) on the basis of monthly periods submitted by quarters. After execution of the Supplemental Agreement pursuant to paragraph e of this clause in respect of a quarterly period, and upon submission of a proper invoice, the Contractor shall be paid or there shall be deducted for the CLIN(s)/subCLIN(s) the amount set forth in such Supplemental Agreement, subject to the limitations contained in paragraph f(2), and/or elsewhere in this contract.
 - (2) Payments under this clause shall be 100 percent of the amount stated in the Supplemental Agreement determined above. After the close of the monthly period during which the CLIN/subCLIN is actually delivered, any remaining deferred payments for economic price adjustment shall, upon submission of proper invoices by the Contractor and upon verification thereof by the Contracting Officer, be promptly paid.
- (g) This paragraph applies to fixed-price incentive CLINs/subCLINs. No adjustment shall be made in the Target Cost, Target Profit, Target Price, or Ceiling Price on account of upwards or downwards adjustments made in accordance with this clause, and hence said adjustments will be paid separately and are outside the incentive price

revision formula provided for the Section I clause entitled “Incentive Price Revision – Firm Target.” To facilitate budgeting forecasts the Contractor shall, 15 days after the end of each monthly period, separately submit draft computations for the economic price adjustment for that monthly period. These draft computations are not binding, nor need to be recalculated as described elsewhere in this clause, and shall only be used for the purpose described in this paragraph g.

- (h) Any dispute arising under this clause shall be determined in accordance with and subject to the requirement of the Section I clause entitled "DISPUTES".

H.23 GOVERNMENT-FURNISHED PROPERTY (INCORPORATION)

The Government will provide only that property set forth in each task order, notwithstanding any term or condition of the order to the contrary. Upon Contractor's written request to the cognizant COTR, via the cognizant Contract Administration Office, the Government will furnish the following for incorporation in the equipment to be delivered under Item(s) of a delivery order: the equipment listed in Attachment J-14.

H.24 PERFORMANCE MEASUREMENT

The Performance Measurement Plan is employed to measure and assess the Contractor’s performance toward maximizing IDS operational effectiveness and minimizing total ownership cost. The Government and the Contractor shall finalize a Performance Measurement Plan within 180 days of contract award. The plan shall be based on the Performance Measurement Plan included in the Contractor’s proposal. The plan will be incorporated into the Contractor’s Integrated Management Plan once finalized.

At a minimum, the Performance Measurement Plan will be used to support:

- (a) Assessment of contractor performance toward meeting total system integration responsibilities
- (b) System cost/performance analysis studies
- (c) Task and delivery order readiness review and management
- (d) Award term evaluations
- (e) Award fee or other financial incentives.

H.25 NO INDEMNIFICATION FOR ACCESS TO ASSETS

Officers, employees, and associates of the Government, or other Contractors with the Government and their subcontractors, and officers, employees, and associates of Offerors on other contemplated work, shall be allowed admission to the Contractor’s facilities and access to the asset(s) without any further request for indemnification from any party, which has not been previously included in the order price.

H.26 RESERVED**H.27 LIENS AND TITLE**

- (a) Any and all payments made hereunder on account of an asset(s) and the materials and equipment therefor shall be secured, when made, by a lien in favor of the Government upon such material and equipment on account of all payments so made, except to the extent that the Government, by virtue of any other provision of this contract, or otherwise, shall have valid title to such material and equipment as against other creditors of the Contractor. If such property is not identified by marking or segregating the Government shall be deemed to have a lien upon a proportionate part of any mass of property with which such property is commingled. Any lien provided for by virtue of this clause is paramount to all other liens. Upon completion and delivery of an asset, said lien shall be discharged as to any materials and equipment which have not been included in the asset and which are no longer required therefor.
- (b) Title to the assets under construction shall be vested in the Government and title to all materials and equipment acquired for each asset shall vest in the Government upon delivery thereof to the plant of the Contractor, provided, that the Contracting Officer may, by written direction, require that title shall vest in the Government upon delivery of such materials and equipment to the carrier for transportation to the plant of the Contractor. The amount of any freight charges, transportation, taxes or other costs which would have been paid by the Contractor, either directly or as an element of any subcontract cost, and which the Contractor shall not be required to pay as a result of such earlier vesting of title and any use of Government bills of lading, shall be determined and treated as though resulting from a change order and the contract price reduced accordingly. Upon completion of the asset(s), or with the approval of the Contracting Officer at any time during the construction/conversion of the asset(s), all such materials and equipment which have not been included therein and which are agreed between the Contractor and the Contracting Officer to be no longer required therefor, except materials and equipment which were furnished by the Government or the cost of which has been reimbursed by the Government to the Contractor, shall become the property of the Contractor; provided, however, that models, mock-ups, plans and other items which the Contractor is expressly required to construct, prepare, or furnish shall remain the property of the Government. Upon completion of this contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, the cost of which has been reimbursed by the Government to the Contractor apart from the fixed price. The Contractor shall deliver or make such other disposal of such property as may be directed or authorized by the Contracting Officer. Recoverable scrap from such property shall be reported in accordance with such procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal shall be credited to the Government and shall be paid in such manner as the Contracting Officer may direct. For the purpose of this clause, "net proceeds" means actual amount collected from such sale of disposal less sales, collection fees and other reasonable related expenses.

- (c) The rights and remedies provided in this clause are in addition to and do not limit any rights and remedies provided to the Government by law or by any other clause of this contract.

H.28 VERIFICATION AND VALIDATION

The Government shall be allowed access to the Contractor's data records to the extent necessary to perform functions under FAR 52.246-2 , FAR 52.246-3, *FAR 52.246-4*, *FAR 52.246-5* and *FAR 52.246-6*. Such access may include an independent validation contractor performing corrections to inadequate or incomplete data deliverables pursuant to FAR 52.246-2(h)(1) or FAR 52.246-3 (g)(1), FAR 52.246-4 (f) (1), FAR 52.246-5 (e) (1) and FAR 52.246-4 (g) (1) (i) . .

H.29 ADDITIONAL PROVISIONS RELATING TO GOVERNMENT PROPERTY

- (a) The Contracting Officer may increase the amount of property to be furnished under an order and the order shall be equitably adjusted to reflect such increase in accordance with procedures of the "CHANGES" clause of the contract.
- (b) Procedures
 - (1) As to all equipment listed in the delivery order, or an attachment to the delivery order as applicable, which will be permanently installed or otherwise built into the asset(s), the AN nomenclature or other model designations given therein are to indicate only the basic description of equipment to be furnished and do not indicate the specific model or manufacturer's equipment that will be furnished. The Government may furnish, without issuing a change under the "CHANGES" clause of the contract, other equipment bearing nomenclature and model designations which further define the specific equipment to be furnished and to further substitute other equipment with different nomenclature or model designations as long as they are geometrically congruent dimensionally and mechanically and electrically interchangeable with the equipment identified in delivery order, or an attachment to the delivery order as applicable.
 - (2) As to all equipment listed in the delivery order, or an attachment to the delivery order, as applicable, which are portable in nature and require only means for stowage in the asset(s), the AN nomenclature or other model designations given therein are to indicate only the basic description of the equipment to be furnished. The Government may furnish, without issuing any change under the "CHANGES" clause of the contract, other equipment bearing different AN nomenclature or other model designations as long as the equipment furnished is functionally interchangeable with the equipment specified in delivery order, or an attachment to the delivery order, as applicable, and no changes in asset stowage provisions are required.
- (c) Unless otherwise specifically directed by the COTR, nonreusable crates and other nonreusable packaging in which Government Property is delivered to the Contractor shall become the property of the Contractor upon removal of the packaged or crated

**H.29 ADDITIONAL PROVISIONS RELATING TO GOVERNMENT PROPERTY
(continued)**

- (d) material. Such crates and other packaging shall not be subject to the provisions of the clauses entitled “52.245-2 Government Property (Fixed Price Contracts) (12/89)” and “52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (1/86).”
- (e) Any packaging or preparation for delivery or for other disposal of Government Property by the Contractor at the direction or authorization of the Contracting Officer pursuant to paragraph (i) of the clauses of an order entitled "GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS and GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-AND-MATERIAL, OR LABOR-HOUR CONTRACTS))" shall be provided for by change order and an appropriate adjustment shall be made in the order price in accordance with the clause of the order entitled "CHANGES".
- (f) Installation and Check Out Spares
 - (1) In addition to the equipment listed on delivery order, or an attachment to the delivery order, as applicable, the Government may provide installation and checkout (I&C) spares. The Contractor shall provide segregated stowage and inventory management for Government-furnished I&C spares. These I&C spares will be pre-positioned by the Government at the Contractor's facility for use by Contractor or Government personnel for the installation and checkout of GFE. The Contractor shall maintain these spares in a suitable warehouse accessible 24 hours per day during GFE installation and checkout, in accordance with the program.
 - (2) The Contractor shall provide proposed I&C storage, inventory management and issue procedures for Government review and approval. These procedures shall address the Contractor's methods for receipt inspection, identification of damage, control of sensitive material, special environmental capabilities, security and availability of timely status information. The procedures must take into consideration any special requirements associated with electronic components such as electrostatic discharge precautions. The procedures should reference applicable military or commercial standards used in management of I&C spares. A list of planned I&C spares, estimated volume, and special requirements will be provided by the Government at least 60 days prior to the arrival of the first item, to allow for warehouse planning.
- (g) The Contractor is required to maintain control of Government property in accordance with Federal Acquisition Regulation (FAR) clause 52.245-2 and 52.245-5. In addition to the specific requirements of FAR 52.245-2 and 52.245-5, the Contractor shall have an automated system for controlling Government property and the automated records shall constitute the official Government property control records. The automated system shall be sufficient to identify the location, quantity and asset assignment of all items of Government property from the time of receipt through issue for installation or disposition of the property from the Contractor's facility. The automated system shall be equivalent, as a minimum, to the automated systems the Contractor uses to control Contractor-owned property and material. The Contractor may include

- (h) Government property in the same computer used to control Contractor-owned property provided that separate records are kept for Government-owned and Contractor-owned property. The Contractor shall provide the Government a list of all items and quantities of Government property accountable to an order in the Contractor's possession. The list shall be provided annually, or upon request, in automated format suitable for comparing Contractor records of Government property with similar Government records. The list shall be sorted in material categories defined by the Government and shall include data elements specified by the Government.
- (i) The Contractor shall have an automated system for I&C allowances. The system shall accept replacement or new requisition document numbers. The system shall include allowance requirements, on hand, on order, inventory status, identification of assets excess to allowance, on line, real time, processing, inventory posting records, inventory usage statistics and available prices.
- (j) The authorized Contracting Officers Technical Representative (COTR) shall have the ability to retrieve information from the Contractor's data base using Contractor terminals already in place or by using Government owned terminals.

H.30 RESERVED

H.31 LIABILITY AND INSURANCE

The Government reserves the right to insert the following clause in delivery orders for the production of assets. The Government will specify, prior to delivery order issuance, the deductible and the not to exceed sum the Contractor is obligated to indemnify.

- (a) The Contractor shall exercise reasonable care and use their best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the asset(s) or parts thereof upon which work is done. Notwithstanding this clause, the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement, or correction of any defects in the asset(s) or such materials and equipment for which the Contractor is responsible, in accordance with the clauses of the order concerning quality assurance, warranty or inspection.
- (b) The Contractor shall not, unless otherwise directed or approved in writing by the Contracting Officer, carry or incur the expense of any insurance against any form of loss or damage to the asset(s) or to the materials or equipment therefor to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to the asset(s) and such materials and equipment which would have been assumed by the underwriters if the Contractor had procured and maintained throughout the term of this contract, on behalf of itself and the Government, insurance with respect to the asset(s) and such materials and equipment for full value against re-keel and post-keel laying risks which would have been customarily carried by the Contractor in the absence of the foregoing requirement that the Contractor not carry or incur the expense of insurance. Except as expressly provided by the

H.31 LIABILITY AND INSURANCE (continued)

- (c) Contracting Officer, the Government does not assume liability for materials while in the possession or control of subcontractor or other third parties. The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to procure or maintain insurance, if available, as required or approved by the Contracting Officer; provided, further, that under this clause the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement or renewal of any defects themselves in the asset(s) or materials or equipment performed by or furnished by the Contractor or its subcontractors which do(es) not conform to the requirements of the contract, whether or not any such defect is latent or whether or not any such nonconformance is the result of negligence; provided, further, that under this clause the Government does not assume the risk of and will not pay for the costs of any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of delay or disruption of any type whatsoever; or willful misconduct or lack of good faith on the part of any of the Contractor's managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business, (ii) all or substantially all of the Contractor's operation at any one plant or (iii) a separate and complete major industrial operation connected with the performance of an order (Lack of good faith is presumed where management has been notified of any unsafe condition or practice contrary to the Fire, Flooding and Destructive Weather Plans, corrective action has been agreed to by management or directed by the Contracting Officer, corrective action is not taken after a reasonable time, and such unsafe condition or practice materially contributes to either the cause of the fire or the extent of the damage.); provided, however, that as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; provided, further, that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as codefendant in any action against the Contractor's liability or for any other purpose. Notwithstanding the foregoing, the Contractor shall bear the first deductible of loss or damage for each occurrence or incident the risk of which the Government otherwise would have assumed under the provisions of this paragraph. This deductible is initially set at _____ and may vary from \$ _____ to \$ _____. For each month from approval of the Fire and Flooding Protection Plan that there is no loss in excess of the deductible, the deductible decreases by \$5,000.00 until the floor of \$ _____ is reached. Upon the occurrence of a loss in excess of the deductible, the deductible increases to \$ _____ and remains at that amount until 3 months with no losses at which time the deductible may then begin to decrease \$5,000.00 for each month without loss in excess of the deductible.
- (d) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, against all suits, actions, claims, costs or demands, (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury, and property damage) to which the Government, its agencies and instrumentalities, may be subject or put by reason of damage or injury (including

H.31 LIABILITY AND INSURANCE (continued)

- death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, or their servants, agents or employees; provided, that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of \$ _____ on account of any one accident or occurrence in respect of any one asset. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance; and with respect to any such suits, actions, claims, costs, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of an order and by law; provided, however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.
- (e) The Contractor shall procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the Contracting Officer, insuring the performance of their obligations under paragraph (c) of this clause. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering their employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Government. All such insurance which is or may be required or approved pursuant to this clause shall be in such form, in such amounts, for such periods of time, and with such insurers as the Contracting Officer may from time to time require or approve, provided the Contractor shall be named as an insured and shall be entitled to payment of any loss or damage as its interest may appear.
- (f) No allowance shall be made to the Contractor in the order price for the inclusion of any premium expense or charge for any reserve made on account of self insurance for coverage against any risk assumed by the Government under this clause. The cost of the insurance required by paragraph (d) of this clause is included in the price and the cost of all other insurance, which may be required or approved pursuant to this clause, will be considered allowable costs under this contract. If the Contracting Officer should require or approve the cancellation of any such insurance, the Contractor will promptly pay to the Government the amount of all unearned premiums refunded to the Contractor, but only to the extent that such premiums shall have been reimbursed to the Contractor by the Government or included in the order price.
- (g) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer. This notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as a result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by themselves or their representatives. The Contractor shall cooperate with the

H.31 LIABILITY AND INSURANCE (continued)

Government and, upon the Government's request, shall assist in effecting settlements,

- (h) securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than shall be imperative for the protection of the asset(s) at the time of said occurrence of such event.
- (i) In the event of loss of or damage to any of the assets or any of the materials or equipment therefor which may result in a claim against the Government under the insurance provisions of this contract, the Contractor promptly shall notify the Contracting Officer of such loss or damages, and the Contracting Officer may, without prejudice to any other right of the Government either:
 - (1) Order the Contractor to proceed with replacement or repair in which event the Contractor shall effect such replacement or repair. The Contractor shall submit to the Contracting Officer a request for the cost of such replacement or repair together with such supporting documentation as the Contracting Officer may reasonably require, and shall identify such requests as being submitted under the "Insurance" Clause of this contract. If the Government determines that the risk of such loss or damages is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of such replacement or repair, plus a reasonable profit (if the work of replacement or repair was performed by the Contractor) less the deductible amount as specified in paragraph (b) of this clause. Payments by the Government to the Contractor under this Insurance clause are outside the scope and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or
 - (2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, (i) modify the order appropriately consistent with the reduced requirements reflected by the un-replaced or unrepaired loss or damage, or (ii) terminate under the Section I clause of an order entitled "Termination for Convenience of the Government (Fixed- Price)."
- (j) This clause describes the relationship between the Contractor and the Government and, as such, shall not be included in subcontracts.

H.32 ACCESS TO PROPRIETARY DATA OR COMPUTER SOFTWARE

- (a) Performance under this contract may require that the Contractor have access to technical data, computer software, or other sensitive data of another party who asserts that such data or software is proprietary. If access to such data or software is required or to be provided, the Contractor shall enter into a written agreement with such party prior to gaining access to such data or software. The agreement shall address, at a minimum, (1) access to, and use of, the proprietary data or software exclusively for the purposes of performance of the work required by this contract, and (2) safeguards to protect such data or software from unauthorized use or disclosure for so long as the data or software remains proprietary. In addition, the agreement shall not impose any limitation upon the Government or its employees with respect to such data or

software. A copy of the executed agreement shall be provided to the Contracting Officer. The Government may unilaterally modify the order to list those third parties with which the Contractor has agreement(s).

- (b) The Contractor for software applicable to the Integrated Deepwater System for which the Contractor does not have preexisting or broad use rights agrees to: (1) indoctrinate its personnel who will have access to the data or software as to the restrictions under which access is granted; (2) not disclose the data or software to another party or other Contractor personnel except as authorized by the Contracting Officer; (3) not engage in any other action, venture, or employment wherein this information will be used, other than under this contract, in any manner inconsistent with the spirit and intent of this requirement; (4) not disclose the data or software to any other party, including, but not limited to, joint venturer, affiliate, successor, or assign of the Contractor; and (5) reproduce the restrictive stamp, marking, or legend on each use of the data or software whether in whole or in part.
- (c) The restrictions on use and disclosure of the data and software described above also apply to such information received from the Government through any means to which the Contractor has access in the performance of an order that contains proprietary or other restrictive markings.
- (d) The Contractor agrees that it will promptly notify the Contracting Officer of any attempt by an individual, company, or Government representative not directly involved in the effort to be performed under an order to gain access to such proprietary information. Such notification shall include the name and organization of the individual, company, or Government representative seeking access to such information.
- (e) The Contractor shall include this requirement in subcontracts of any tier which involve access to information covered by paragraph (a), substituting "subcontractor" for "Contractor" where appropriate.

H.33 RESERVED

H.34 EFFECTIVE ISSUE

Where industry standards or Government specifications are referred to without reference to date or revision number, the issue or revision in effect on 1 January 2001 shall apply.

Where manufacturer's type, model, or other commercial designation is referred to, the characteristics in effect on the date of submission of the Contractor's task or delivery order proposal shall apply. Where model numbers or other commercial design actions have been superseded since submission of the Contractor's task or delivery order proposal, new model numbers or designations may be utilized provided the equipment characteristics associated with the new designation are the same as or superior to those associated with the superseded designation. The Contractor shall indicate Equipment Equivalency in such cases.

H.35 RESERVED**H.36 COMPUTER SOFTWARE AND/OR COMPUTER DATABASE(S) DELIVERED TO AND/OR RECEIVED FROM THE GOVERNMENT**

(a) Definitions. As used in this clause:

- (1) Computer database means a collection of data recorded on a form capable of being processed by a computer. The term does not include computer software
 - (2) Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
 - (3) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated or recompiled. Computer software does not include computer database or computer documentation.
- (b) The Contractor agrees to test for viruses all computer software, computer programs, and/or computer databases, before delivery of that computer software, computer program or computer database in whatever media and on whatever system the software is delivered. The Contractor warrants that any such computer software, computer program and/or computer database will be free of reasonable detectable viruses when delivered.
- (c) The Contractor agrees to test any computer software, computer program and/or computer database(s) received from the Government for viruses prior to use under this contract.
- (d) Unless otherwise agreed in writing, any license agreement governing the use of any computer software to be delivered as a result of this contract must be paid-up and perpetual, or so nearly perpetual as to allow the use of the computer software, computer program or computer data base with the equipment for which is obtained, or any replacement equipment, for so long as such equipment is used. Otherwise the computer software, computer program, or computer database does not meet the minimum functional requirements of this contract. In the event there is any routine to disable the computer software, computer program, or computer data base in the future, that date certainly shall not be less than 25 years after the delivery date of the computer software or computer database. In no case shall asset control software be equipped with any disabling routines.
- (e) No copy protection devices or systems shall be used in any computer software, computer program, or computer database under this contract to restrict or limit the Government from making copies. This does not prohibit license agreements from specifying the maximum amounts of copies that can be made.
- (f) Delivery by the Contractor to the Government of certain technical data and other data is now frequently required in digital form rather than as hard copy. Such delivery

may cause confusion between data rights and computer software rights. It is agreed that, to the extent that any such data is computer software by virtue of its delivery in digital form, the Government will be licensed to use that digital-form data with exactly the same rights and limitations as if the data had been delivered as hard copy.

- (g) Any limited rights legends or other allowed legends placed by a Contractor on technical data or other data delivered in digital form shall be digitally included on the same media as the digital-form data and must be associated with the corresponding digital-form technical data to which the legends apply to the extent possible. Such legends shall also be placed in human-readable form on a visible surface of the media carrying the digital-form data as delivered, or the media casing to the extent possible.

H.37 USE OF NON-DEVELOPMENTAL ITEMS (NDI)

Use of Commercial and Non-developmental Items CANDI is the preferred method of satisfying operational requirements where such use does not degrade the operational or performance requirements.

The term CANDI means:

- (a) Any item of supply that is available in the commercial marketplace;
- (b) Any previously developed item of supply that is in use by a department or agency of the United States, a State or local Government, or a foreign Government with which the United States has a mutual defense cooperation agreement;
- (c) Any item of supply described in paragraph (a) or (b) that requires only minor modification as defined in FAR part 2.101, in order to meet the requirements of the procuring agency; or
- (d) Any item of supply that is currently being produced that does not meet the requirements of paragraph (a), (b), or (c) solely because the item:
 - (1) Is not yet in use; or
 - (2) Is not yet available in the commercial marketplace.

The Contractor is encouraged to propose CANDI or partial CANDI alternatives to conventional R&D or MIL-SPEC production hardware or software requirements of this solicitation at all levels of the work breakdown structure (i.e., end-item, subsystem, component, piece part, etc.). (note this was recommended to be deleted in another comment)

H.38 MANAGEMENT AND DISPOSAL OF HAZARDOUS WASTE

H.38.1 GENERAL

The Contractor shall comply with the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 10 U.S.C. 7311 and all other applicable Federal, State and local laws, codes, ordinances and regulations for the management and disposal of hazardous waste.

Nothing contained in this special order requirement shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations, including obtaining licenses and permits, giving notices and submitting reports, in connection with hazardous waste management and disposal in the performance of this contract. Nothing contained herein shall serve to alter either party's liability or responsibility under CERCLA.

Materials contained in asset systems are not waste until after removal from the system.

H.38.2 IDENTIFICATION OF HAZARDOUS WASTES

Delivery Orders issued under this contract will identify the types and amounts of hazardous wastes that are required to be removed by the Contractor, or that are expected to be generated, during the performance of work under this contract.

H.38.3 GENERATOR IDENTIFICATION NUMBERS

- (a) Documentation related to hazardous waste generated solely by the physical actions of ship's force or Government employees shall only bear a generator identification number issued to the Government pursuant to applicable law.
- (b) Documentation related to hazardous waste generated solely by the physical actions of Contractor personnel shall only bear a generator identification number issued to the Contractor pursuant to applicable law. Regardless of the presence of other materials in or on systems or structures which may have qualified a waste stream as hazardous, where the Contractor performs work on a system or structure using materials (whether or not the use of such materials was specified by the Government) which by themselves would cause the waste from such work to be a hazardous waste, documentation related to such waste shall only bear a generator identification number issued to the Contractor.
- (c) Documentation related to hazardous waste generated by the combined physical actions of Government and Contractor personnel shall bear a generator identification number issued to the Contractor pursuant to applicable law and shall also cite in the remarks block a generator identification number issued to the Government pursuant to applicable law.
- (d) Notwithstanding paragraphs H.38.3 (a) through (c) above, hazardous wastes are considered to be co-generated in cases where: (a) the Contractor merely drains a system and such drainage creates hazardous waste or (b) the Contractor performs work on a system or structure using materials which by themselves would not cause the waste from such work to be hazardous waste but such work nonetheless creates a hazardous waste. Documentation related to such co-generated waste shall bear a generator identification number in accordance with the provisions of paragraph H.38.3 (c) above.
- (e) In the event of a failure by the parties to agree to the assignment of a generator identification number to any hazardous waste as set forth in paragraphs H.38 (a) through (d) above, the Contracting Officer may direct which party or parties shall provide generator identification numbers for the waste. Such number(s) shall be used on all required documentation. Any disagreement with this direction shall be a

dispute within the meaning of the "DISPUTES" (FAR 52.233-1) clause of this contract. However, the Contractor shall not stop any work but shall continue with performance of all work under an order as specified in the "DISPUTES" clause.

- (f) Hazardous Waste Manifests - for wastes described in H.38.3 (b) through (d) above (and H.38.3 (5) as applicable), the Contractor shall sign the generator certification on the Uniform Hazardous Waste Manifest whenever use of the Manifest is required for disposal. The Contractor shall obtain COTR concurrence with the categorization of wastes under paragraphs H.38.3 (c) and H.38.3 (d) above before completion of the manifest. Manifests prepared pursuant to paragraph H.38.3 (a) above shall be presented to the COTR for completion after the hazardous waste has been identified.
- (g) For purposes of paragraphs H.38.3 (b) and (c) herein, if the Contractor, while performing work at a Government facility, cannot obtain a separate generator identification number from the State in which the availability will be performed, the Contractor shall notify the Contracting Officer within 3 business days of receipt of written notification by the State. After obtaining Contracting Officer approval, the Contractor shall use the Government site generator identification number and insert in the remarks block the Contractor generator identification number issued for the site where his main facilities are located. For purposes of paragraph H.38.3 (a) herein, if the work is being performed at a Contractor facility and the Government cannot obtain a separate generator identification number for the State, the Government shall use the Contractor site generator identification number and shall cite in the remarks block a Government generator identification number. In both instances described above, the Contractor shall prepare the Uniform Hazardous Waste Manifest described in paragraph H.38.3 (f) above and present it to the COTR for completion.

H.39 CONTRACT DEFINITIZATION (OCT 1998) **(THIS CLAUSE APPLIES TO PROVISIONING AND SPARES)**

- (a) A _____ (insert specific type of contract action) is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the undefinitized contract action, (2) all clauses required by law on the date of execution of the definitive contract action, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a _____ (insert type of proposal; e.g., fixed-price or cost-and-fee) proposal and cost or pricing data supporting its proposal.
- (b) The schedule for definitizing this contract action is as follows (insert target date for definitization of the contract action and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of the make-or-buy and subcontracting plans and cost or pricing data):

- (c) If agreement on a definitive contract action to supersede this undefinitized contract action is not reached by the target date in paragraph (b) of this clause, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.
- (1) After the Contracting Officer's determination of price or fee, the contract shall be governed by --
 - (i) All clauses required by the FAR on the date of execution of this undefinitized contract action for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);
 - (ii) All clauses required by law as of the date of the Contracting Officer's determination; and
 - (iii) Any other clauses, terms, and conditions mutually agreed upon.
- (2) To the extent consistent with paragraph (c)(1) of this clause, all clauses, terms, and conditions included in this undefinitized contract action shall continue in effect, except those that by their nature apply only to an undefinitized contract action.
- (d) The definitive contract resulting from this undefinitized contract action will include a negotiated _____ (insert "cost/price ceiling" or "firm-fixed price") in no event to exceed _____ (insert the not-to-exceed amount).

H.40 SUBCONTRACT MANAGEMENT

The Contractor shall be solely responsible for the performance and quality of all subcontractor work performed in response to the requirements of this contract. The Contractor shall ensure flowdown to subcontractors of all applicable cost, performance, quality, and environmental requirements. The Contractor shall report that flowdown at post-award conferences and report subsequent subcontractor status at program reviews.

The Contractor shall identify and monitor significant technical, quality, schedule, and milestone achievement on a continuing basis. The Contractor shall ensure contractual requirements are allocated down to the subcontractor level.

The Contractor shall make provision for Government representatives to participate in subcontractor visits, technical working groups and reviews, and to observe testing/work in progress. The Contractor shall give 15 days advance notice to the Contracting Officer, or designated technical representative, prior to planned program reviews and tests.

H.41 RESERVED**H.42 ENVIRONMENTAL CONTROLS**

Notwithstanding that an order may require the use of paints or coatings which do not meet state or district requirements for reduced volatile organic compounds (VOCs), the Contractor must comply with all international, federal, state, and local regulatory requirements respecting air quality and emission limitations. It remains the Contractor's responsibility to meet the requirements for reduced VOCs even where to do so will require the use of engineering controls or other special painting equipment.

H.43 TECHNICAL DATA AND COMPUTER SOFTWARE IDENTIFICATION IN ENGINEERING CHANGE PROPOSALS (ECPs)

ECPs submitted by the Contractor shall identify each item of technical data and computer software delivered by the Contractor under any prior task or delivery order under this contract required to be revised as a result of the proposed change and shall include an estimated price and cost proposal to furnish the revisions.

H.44 PROHIBITION AGAINST FOREIGN SHIPYARDS

In accordance with 14 U. S. C. § 665 and 10 U. S. C. § 7309, no ship(s), including major components of the hull or superstructure, required by this contract may be constructed in a foreign shipyard.

H.45 EMERGENT WORK REQUESTS

(a) Definitions. As used in this clause --

- (i) "Emergent work" means work that is –
- (ii) Within the general scope of the contract;
- (iii) Not covered by the line item(s) for the basic work under the contract; and
- (iv) Necessary to satisfactorily complete the contract.

(b) Emergent work includes:

- (1) "Over and above work" - work discovered during the course of performing overhaul, maintenance, and repair
- (2) "Accident Recovery Assistance" - technical and engineering assistance to support accident investigation requirements
- (3) "Engineering Services" – review and evaluation of engineering and/or technical problems pertaining to the design, operation, installation, design, maintenance, logistical support, and repair of assets and /or component (s) thereof.
- (4) "Engineering Investigations" - Investigations conducted to determine the cause of reported equipment failure or malfunction (possibly safety related).

- (c) "Work request" means a document prepared by the Contractor which describes over and above work being proposed.
- (d) The Contractor and Contracting Officer shall mutually agree to procedures for Government administration and Contractor performance of Emergent work requests. If the parties cannot agree upon the procedures, the Administrative Contracting Officer has the unilateral right to direct the emergent work procedures to be followed. These procedures shall, as a minimum, cover --
 - (1) The format, content, and submission of work requests by the Contractor. Work requests shall contain data on the type of discrepancy disclosed, the specific location of the discrepancy, and the estimated labor hours and material required to correct the discrepancy. Data shall be sufficient to satisfy contract requirements and obtain the authorization of the Contracting Officer to perform the proposed work;
 - (2) Government review, verification, and authorization of the work; and
 - (3) Proposal pricing, submission, negotiation, and definitization.
- (e) Upon discovery of the need for over and above work, the Contractor shall prepare and furnish to the Government a work request in accordance with the agreed-to procedures.
- (f) The Government will --
 - (1) Promptly review the work request;
 - (2) Verify that the proposed work is required and not covered under the basic contract line item(s);
 - (3) Verify that the proposed corrective action is appropriate; and
 - (4) Authorize over and above work as necessary.
- (g) The Contractor shall promptly submit to the Contracting Officer, a proposal for the emergent work. The Government and Contractor will then negotiate a settlement for the over and above work. Contract modifications will be executed to definitize all over and above work.

H.46 RESERVED

H.47 TRAVEL

Performance under an order may require travel by Contractor personnel. If domestic or overseas travel is required, the Contractor is responsible for making all necessary arrangements for its personnel. These arrangements include medical examinations, immunizations, passports/visas/etc., and security clearances. All Contractor personnel required to perform work on any U.S. public vessel shall obtain boarding authorization from the vessel's Commanding Officer before boarding.

H.48 RESERVED**H.49 CEREMONIES**

Public Relations Ceremonies for laying the keel and launching of surface assets, the rollout of new classes of air assets, or the opening of land based facilities associated with the IDS will be approved by the Contracting Officer.

Arrangements for laying the keel and launching of surface assets, the rollout of new classes of air assets, or the opening of land based facilities associated with the IDS shall be the responsibility of the Contractor. Expenses incident to the ceremonies and social amenities accompanying them shall be allowable to the extent provided under Part 31 of the FAR (31.205-1). The arrangements shall be coordinated with the Contracting Officer. The date of each ceremony shall be selected by the Contractor in cooperation with the Contracting Officer. A date shall be fixed at least 2 months prior to the ceremony for keel laying and 3 months prior for all other events. Selection of a ship sponsor for launching is the responsibility of the Government. Invitations shall be sent by the Contractor to those on a guest list compiled by the Contractor in cooperation with the Contracting Officer. The invitations shall be in the name of the Contractor. A list of guests to be invited will be furnished by the Government.

Publicity for the ceremonies shall be the responsibility of the Contractor and shall be coordinated with the Contracting Officer. Publicity releases shall be approved by the Contracting Officer. The Contracting Officer will provide such assistance as necessary to facilitate adequate and favorable publicity. Two advanced copies of all releases and press kits shall be sent to the Contracting Officer sufficiently in advance of local release time to permit simultaneous release by the cognizant Government authorities in Washington DC.

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS

(a) *Definitions.* As used in this clause:

- (1) “Computer data base” means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
- (2) “Computer program” means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (3) “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.
- (4) “Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

- (5) software or provide instructions for using the software.
- (6) “Detailed manufacturing or process data” means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.
- (7) “Developed” means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered “developed,” the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.
- (8) “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract, or any combination thereof.
 - (i) Private expense determinations should be made at the lowest practicable level.
 - (ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at Government, private, or mixed expense.
- (9) Developed exclusively with Government funds” means development was not accomplished exclusively or partially at private expense.
- (10) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a Government contract, and partially with costs charged directly to a Government contract.
- (11) “Form, fit, and function data” means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.
- (12) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(13) “Government purpose rights” means the rights to—

- (i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and
- (ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States Government purposes.

(14) “Limited rights” means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce, release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is—

- (i) Necessary for emergency repair and overhaul; or
- (ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;
- (iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and
- (iv) The Contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(15) “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(16) “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

- (b) *Rights in technical data.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

Documentation clause of this contract for rights in computer software documentation):

- (1) Unlimited rights. The Government shall have unlimited rights in technical data that are—
 - (i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;
 - (ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;
 - (iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
 - (iv) Form, fit, and function data;
 - (v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
 - (vi) Corrections or changes to technical data furnished to the Contractor by the Government;
 - (vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;
 - (viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or
 - (ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with—
 - (A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or
 - (B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.
- (2) Government purpose rights.
 - (i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data—
 - (A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

such data as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless—

(A) Prior to release or disclosure, the intended recipient is subject to a non-disclosure agreement; or

(B) The recipient is a Government Contractor receiving access to the data for performance of a Government contract that contains a clause Limiting the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) Limited rights.

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data—

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

- (iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.
- (4) Specifically negotiated license rights. The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(13) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.
- (5) Prior government rights. Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—
 - (i) The parties have agreed otherwise; or
 - (ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.
- (6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(13) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.
- (c) *Contractor rights in technical data*. All rights not granted to the Government are retained by the Contractor.
- (d) *Third party copyrighted data*. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

- (e) Identification and delivery of data to be furnished with restrictions on use, release, or disclosure.
- (1) This paragraph does not apply to restrictions based solely on copyright.
 - (2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.
 - (3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted—

| Technical Data | | | Name of Person |
|--------------------|-------------|-----------------|------------------|
| To be Furnished | Basis for | Asserted Rights | Asserting |
| With Restrictions* | Assertion** | Category*** | Restrictions**** |
| (LIST) | (LIST) | (LIST) | (LIST) |

*If the assertion is applicable to items, components, or processes developed at private expense, identify both the data and each such item, component, or process.

**Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

****Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

- (4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.
- (f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.
- (1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.
- (2) Government purpose rights markings. Data delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

Contractor Name

Contractor Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data—Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

- (3) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

LIMITED RIGHTS

Contract No.

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

- (4) Special license rights markings.
- (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. ____ (Insert contract number) ____, License No. ____ (Insert license identifier) ____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

markings.

- (ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).
- (5) Pre-existing data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.
- (g) *Contractor procedures and records*. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall—
 - (1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
 - (2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.
- (h) Removal of unjustified and nonconforming markings.
 - (1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.
 - (2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

H.50 RIGHTS IN TECHNICAL DATA – NONCOMERCIAL ITEMS (continued)

- (i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- (j) Limitation on charges for rights in technical data.
 - (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when—
 - (i) The Government has acquired, by any means, the same or greater rights in the data; or
 - (ii) The data are available to the public without restrictions.
 - (2) The limitation in paragraph (j)(1) of this clause—
 - (i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
 - (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.
- (k) Applicability to subcontractors or suppliers.
 - (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.
 - (2) Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.
 - (3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier Contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier

- (4) contractor, subcontractor, or supplier.
- (5) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers.
- (6) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligation to the Government.

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION

(a) *Definitions.* As used in this clause:

- (1) “Commercial computer software” means software developed or regularly used for non-governmental purposes which—
 - (i) Has been sold, leased, or licensed to the public;
 - (ii) Has been offered for sale, lease, or license to the public;
 - (iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or
 - (iv) Satisfies a criterion expressed in paragraph (a)(1)(i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.
- (2) “Computer database” means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.
- (3) “Computer program” means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (4) “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.
- (5) “Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.
- (6) “Developed” means that—A computer program has been successfully operated

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

- (7) in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;
 - (i) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or
 - (ii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.
- (8) “Developed exclusively at private expense” means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.
 - (i) Private expense determinations should be made at the lowest practicable level.
 - (ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.
- (9) “Developed exclusively with government funds” means development was not accomplished exclusively or partially at private expense.
- (10) “Developed with mixed funding” means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.
- (11) “Government purpose” means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.
- (12) “Government purpose rights” means the rights to—
 - (i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation within the Government without restriction; and

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

- (ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.
- (13) “Minor modification” means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.
- (14) “Noncommercial computer software” means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.
- (15) “Restricted rights” apply only to noncommercial computer software and mean the Government's rights to—
 - (i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;
 - (ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;
 - (iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;
 - (iv) Modify computer software provided that the Government may—
 - (A) Use the modified software only as provided in paragraphs (a)(14)(i) and (iii) of this clause; and
 - (B) Not release or disclose the modified software except as provided in paragraphs (a)(14)(ii), (v) and (vi) of this clause;
 - (v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that—
 - (A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

- (B) Such contractors or subcontractors are subject to a use and non-disclosure agreement or are Government contractors receiving access to the software for performance of a Government contract that contains a clause Limiting the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;
- (C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and
- (D) Such use is subject to the limitation in paragraph (a)(14)(i) of this clause; and
- (vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that—
 - (A) The intended recipient is subject to a non-disclosure agreement or is a Government contractor receiving access to the software for performance of a Government contract that contains a clause Limiting the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and
 - (B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.
- (16) “Unlimited rights” means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.
- (b) *Rights in computer software or computer software documentation.* The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.
 - (1) Unlimited rights. The Government shall have unlimited rights in—
 - (i) Computer software developed exclusively with Government funds;
 - (ii) Computer software documentation required to be delivered under this contract;

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

- (iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;
 - (iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;
 - (v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or
 - (vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with—
 - (A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or
 - (B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.
- (2) Government purpose rights.
- (i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software developed with mixed funding.
 - (ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.
 - (iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless—
 - (A) Prior to release or disclosure, the intended recipient is subject to a use and non-disclosure agreement; or
 - (B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

that contains a clause Limiting the Use or Disclosure of Government
Furnished Information Marked with Restrictive Legends.

(3) Restricted rights.

- (i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.
- (ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(4) Specifically negotiated license rights.

- (i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(13) of the Rights in Technical Data--Noncommercial Items clause of this contract.
- (ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless—

- (i) The parties have agreed otherwise; or
- (ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

- (c) *Rights in derivative computer software or computer software documentation.* The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.
- (d) *Third party copyrighted computer software or computer software documentation.* The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such—
 - (1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or
 - (2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.
- (e) Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure.
 - (1) This paragraph does not apply to restrictions based solely on copyright.
 - (2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.
 - (3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor:

Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of
Computer Software.

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

| Computer Software | | | Name of Person |
|--------------------|-------------|-----------------|------------------|
| To be Furnished | Basis for | Asserted Rights | Asserting |
| With Restrictions* | Assertion** | Category*** | Restrictions**** |
| (LIST) | (LIST) | (LIST) | (LIST) |

*Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

**Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

***Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights from a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

****Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

- (4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions—Computer Software clause of this contract.
- (f) *Marking requirements.* The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

- (1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmittal document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.
- (2) Government purpose rights markings. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.

Contractor Name

Contractor Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

- (3) Restricted rights markings. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

RESTRICTED RIGHTS

Contract No.

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(4) Special license rights markings.

- (i) Computer software or computer software documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. ____ (Insert contract number) ____, License No. ____ (Insert license identifier) _____. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

- (ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

- (5) Pre-existing markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

paragraph (f)(1) of this clause shall be followed.

- (g) *Contractor procedures and records.* Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall—
 - (1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and
 - (2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.
- (h) Removal of unjustified and nonconforming markings.
 - (1) Unjustified computer software or computer software documentation markings. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.
 - (2) Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.
- (i) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

H.51 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NON COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (continued)

- (j) Limitation on charges for rights in computer software or computer software documentation.
 - (1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when
 - (2) The Government has acquired, by any means, the same or greater rights in the software or documentation; or
 - (i) The software or documentation are available to the public without restrictions.
 - (3) The limitation in paragraph (j)(1) of this clause—
 - (i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and
 - (ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.
- (k) Applicability to subcontractors or suppliers.
 - (1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.
 - (2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.
 - (3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.
 - (4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software

- (5) documentation as an excuse for failing to satisfy its contractual obligation to the Government.

H.52 DISPOSITION OF GOVERNMENT FURNISHED PROPERTY

When disposition instructions for Government Furnished Property are contained in the accountable contract or on the supporting shipping documents (DD Form 1149) the Contractor shall initiate and submit an excess inventory listing to the Contracting Officer.

When disposition instructions are not stipulated in the contract or supporting shipping document (DD Form 1149), an excess inventory listing identifying Government Furnished Property and, under cost reimbursement contracts, Contractor Acquired Property, will also be submitted to the Contracting Officer at which time disposition instructions will be provided.

At the time of the Contractor's regular annual inventory, the Contractor will provide the Contracting Officer a copy of the physical inventory listing.

H.53 RIGHTS IN MASK WORKS

- (a) The Contractor grants to the Government, a non-exclusive, irrevocable, royalty free, world wide license under any mask work developed with government funds in the performance of work under this contract to:
 - (1) Reproduce the mask work by optical, electronic, or any other means;
 - (2) Import or distribute a semiconductor chip product in which the mask work is embodied; and
 - (3) Induce or knowingly to cause another person, Contractor or subcontractor to do any of the acts described in the above subparagraphs (a)(1) or (a)(2).
- (b) The Contractor shall include this clause, suitably modified to replace "contractor" with "subcontractor" in all subcontracts, regardless of tier, in which a mask work is likely to be created in the performance of the work under the subcontract. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's mask works.

H.54 OCCUPATIONAL SAFETY AND HEALTH REQUIREMENTS

- (a) Contractors are responsible for following all safety and health related State and Federal statutes and corresponding State, Federal and/or Coast Guard regulations (i.e., COMDTINST 5100.47, Safety and Environmental Health Manual) protecting the environment, Contractor employees, and persons who live and work in and around Contractor and/or federal facilities.
- (b) Contractors shall monitor their employees and ensure that they are following all safety regulations particular to the work areas. Contractors shall ensure that their employees (i) wear appropriate safety equipment and clothing, (ii) are familiar with all relevant emergency procedures should an accident occur, and (iii) have access to a

telephone and telephone numbers, to include emergency telephone numbers, for facility where work is performed.

H.55 PROCESSING DATE DATA

- (a) The Contractor warrants that each item of hardware, software, and firmware delivered or developed under this contract shall be able to accurately process date data. All items used together to perform as a system in accordance with the foregoing warranty, then that warrant shall apply to those items of the system.
- (b) The duration of this warranty and the remedies available to the Government for breach of this warranty shall be defined in, and subject to, the terms and conditions of any general warranty provisions of this contract, provided that notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to the Government shall include repair or replacement of any items whose non-compliance is discovered and made known to the Contractor in writing within ninety (90) days after discovery.

H.56 GROUND AND FLIGHT RISK

(a) *Definitions.* As used in this clause-

- (1) "Aircraft," unless otherwise provided in the Schedule, means-
 - (i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft; and
 - (ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.
- (2) "Contractor's premises" means those premises designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.
- (3) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.
 - (i) For land based aircraft, "flight" begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises;

H.56 GROUND AND FLIGHT RISK (continued)

- (ii) For seaplanes, "flight" begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises;
 - (iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and
 - (iv) For vertical take-off aircraft, "flight" begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises;
 - (v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.
- (4) "Flight crew member" means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. If required, a defense systems operator may also be assigned as a flight crew member.
 - (5) "In the open" means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being "in the open." Government furnished aircraft shall be considered to be located "in the open" at all times while in the Contractor's possession, care, custody, or control.
 - (6) "Operation" means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.
- (b) Except as may be specifically provided in the Schedule as an exception to this clause, the Government assumes the risk of damage to, or loss or destruction of aircraft "in the open," during "operation," and in "flight." The Contractor shall not be liable to the Government for such damage, loss, or destruction.
 - (c) The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.
 - (1) The Contracting Officer, when finding aircraft in the open under unreasonable conditions, shall notify the Contractor in writing of the unreasonable conditions and require the Contractor to make corrections within a reasonable time.
 - (2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are

H.56 GROUND AND FLIGHT RISK (continued)

unreasonable. If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions. Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

- (3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the Contractor. If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk. Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.
 - (4) If the Government terminates its assumption of risk, the risk of loss for Government-furnished property shall be determined in accordance with the Government Property clause of this contract.
 - (5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected. If the Government elects to again assume the risk of loss and relieve the Contractor of liabilities, the Contracting Officer will notify the Contractor. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Contractor notice of correction until the Contractor is notified that the Government will assume the risk of loss. If the Government does not again assume the risk of loss and conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day.
- (d) The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which-
- (1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice. The term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who supervise or direct all or substantially all of the Contractor's business; or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed; or a separate and complete major industrial operation in connection with the performance of this contract;
 - (2) Is sustained during flight if the flight crew members have not been approved in

H.56 GROUND AND FLIGHT RISK (continued)

writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled "**Contractor's Flight and Ground Operations**" (Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1);

- (3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;
 - (4) Is covered by insurance;
 - (5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice in the property.); or
 - (6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.
- (e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first \$25,000 of loss or damage to aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$25,000 (or the amount of the loss, if less) as directed by the Contracting Officer.
- (f) A subcontractor shall not be relieved from liability for damage, loss, or destruction of aircraft while in its possession or control, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability, and damage, loss, or destruction occurs, the Contractor shall enforce liability against the subcontractor for the benefit of the Government.
- (g) The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation,

H.56 GROUND AND FLIGHT RISK (continued)

or in flight when the risk has been assumed by the Government, even if the assumption may be terminated for aircraft in the open.

- (h) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, to put all aircraft in the best possible order and further, except in cases covered by paragraph (e) of this clause, the Contractor shall furnish to the Contracting Officer a statement of-
 - (1) The damaged, lost, or destroyed aircraft;
 - (2) The time and origin of the damage, loss, or destruction;
 - (3) All known interests in commingled property of which aircraft are a part; and
 - (4) The insurance, if any, covering the interest in commingled property.

Except in cases covered by paragraph (e) of this clause, the Contracting Officer will make an equitable adjustment in the contract price for expenditures made by the Contractor in performing the obligations under this paragraph.

- (i) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either-
 - (1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or
 - (2) Terminate this contract with respect to the aircraft, in which event the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines-
 - (i) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and
 - (ii) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause.

- (j) In the event the Contractor is reimbursed or compensated by a third person for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against

- (k) third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment of subrogation) in obtaining recovery.
- (l) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled "Contractor's Flight and Ground Operations" in effect on the date of contract award.

H.57 AIRCRAFT FLIGHT RISK

(a) *Definitions.* As used in this clause-

- (1) "Aircraft," unless otherwise provided in the Schedule, means-
 - (i) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or
 - (ii) (ii) Aircraft furnished by the Government to the Contractor, including all Government property placed on, installed or attached to the aircraft; provided that the aircraft and property are not covered by a separate bailment agreement.
- (2) "Flight" means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.
 - (i) For land-based aircraft, "flight" begins with the taxi roll from a flight line and continues until the aircraft has completed the taxi roll to a flight line.
 - (ii) For seaplanes, "flight" begins with the launching from a ramp and continues until the aircraft has completed its landing run and is beached at a ramp.
 - (iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off and continues until the aircraft has returned to the ground and rotors are disengaged.
 - (iv) For vertical take-off aircraft, "flight" begins upon disengagement from any launching platform or device and continues until the aircraft has been reengaged to any launching platform or device.
- (3) "Flight crew members" means the pilot, co-pilot, and unless otherwise provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator as required, when assigned to their respective crew positions to conduct any flight on behalf of the Contractor.
- (b) This clause takes precedence over any other provision of this contract (particularly paragraph (g) of the Government Property (Cost-Reimbursement, Time-and-

Materials, or Labor-Hour Contracts) clause and paragraph (c) of the Insurance-Liability to Third Persons clause).

- (c) Unless the flight crew members previously have been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled "Contractor's Flight and Ground Operations" (**Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1C, and Defense Logistics Agency Manual 8210.1**), the Contractor shall not be-
 - (1) Relieved of liability for damage, loss, or destruction of aircraft sustained during flight; or
 - (2) Reimbursed for liabilities to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight.
 - (3) The loss, damage, or destruction of aircraft during flight in an amount exceeding \$100,000 or 20 percent of the estimated cost of this contract, whichever is less, is subject to an equitable adjustment when the Contractor is not liable under-
 - (i) The Government Property (Cost-Reimbursement, Time-and-Materials, or Labor-Hour Contracts) clause, and
 - (ii) Paragraph (c) of this clause.
 - (4) The equitable adjustment under this contract for the resulting repair, restoration, or replacement of aircraft shall be made-
 - (i) In the estimated cost, the delivery schedule, or both; and
 - (ii) In the amount of any fee to be paid to the Contractor.
 - (5) In determining the amount of equitable adjustment in the fee, the Contracting Officer will consider any fault of the Contractor, its employees, or any subcontractor that materially contributed to the damage, loss, or destruction.
 - (6) Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.
- (d) The Contractor agrees to be bound by the operating procedures contained in the combined regulation entitled "Contractor's Flight and Ground Operations" in effect on the date of contract award.

H.58 ENGINEERING CHANGE PROPOSAL (ECP'S)

- (a) General Requirement. The Contracting Officer may ask the Contractor to prepare engineering change proposals for engineering changes within the scope of this order. Upon receipt of a written request from the Contracting Officer, the Contractor shall prepare and submit Engineering Change Proposals (ECP's), requests for deviations, and requests for waivers, together with supporting documentation, affecting or concerning the assets to be delivered under this order, in accordance with this clause;

H.58 ENGINEERING CHANGE PROPOSAL (ECP's) (continued)

- (b) Section J, Attachment 7, Sections 2.5 and 2.9, System Integration Statement of Work; The Contractor's Configuration Management Plan, individual Task or Delivery order and all contractual documentation at time of order award.

The Contractor may initiate engineering change proposals. Contractor initiated engineering change proposals shall include, depending on order type, a "not to exceed" price or a "not less than" price, a "not to exceed" estimated cost and fee or a "not less than" estimated cost and fee, and delivery adjustment. Change orders issued under the Changes clause of this contract are not an authorization to exceed the estimated cost for cost type orders in the schedule unless there is a statement in the change order or other contract modification, increasing the estimated cost.

- (c) ECP Requirement and Initiation. In addition to preliminary and formal ECP's which the Contractor may initiate and propose, and in addition to changes which the Contracting Officer may issue pursuant to the clause of the Contract Clauses entitled "CHANGES --FIXED PRICE" FAR 52.243-1, (AUG 1987), "CHANGES --COST REIMBURSEMENT" FAR 52.243-2, (AUG 1987)," or "CHANGES --Time and Materials " FAR 52.243-3, (AUG 1987), the Contracting Officer, for purposes of arriving at a decision as to whether to incorporate an engineering change in this contract, may from time to time and at any time, in writing, require the Contractor to prepare and submit a formal ECP with respect to an engineering change initiated and proposed by the Contracting Officer within the general scope of an order to this contract or to revise any previously submitted formal ECP, whether initiated by the Contractor or the Contracting Officer; or to submit a formal ECP as the result of a preliminary ECP. Upon receipt of such written requirement, the Contractor shall submit an initial or revised formal ECP, including supporting data, within such time as the Contracting Officer may reasonably specify in view of the priority assigned to the ECP, or, if no time is specified, within 45 days, or such further time as the Contracting Officer may allow.
- (d) "Firm Offer" and Contract Acceptance of ECP's. The Contractor's "Estimated Cost/Savings under Contract" for each ECP, whether submitted on the Contractor's own initiative or submitted in response to a requirement of the Contracting Officer as an initial or revised ECP, as provided in paragraph .(b), shall constitute an irrevocable proposal or offer for sixty (60) days from receipt of the ECP by the Government unless such period of time is extended by mutual agreement. During this period the Contracting Officer may:
- (1) Accept such proposal or offer by mailing or otherwise presenting to the Contractor a modification of this contract for execution by the Contractor, which modification shall reflect the engineering change(s) contained in the ECP, the consequent changes in the delivery schedule, if any, and the Contractor's estimated net increase or decrease in contract price, and the Contractor agrees to execute such a modification within five (5) working days after receipt; or
 - (2) Conditionally accept such offer by mailing or otherwise presenting to the Contractor a bilateral modification of this contract, for execution by the Contractor, which modification shall be the same as in subparagraph (1) immediately above, except that it shall set forth the Contractor's estimate

H.58 ENGINEERING CHANGE PROPOSAL (ECP's) (continued)

depending on order type a ceiling or a maximum change in contract price in the case of net increase and as a floor or a minimum change in the contract price in the case of a net decrease, a *"not to exceed" estimated cost and fee* or a *"not less than" estimated cost and fee* and except that it may set forth the Contractor's proposed change in delivery schedule, if any, as a maximum extension or a minimum advance as the case may be; and the Contractor agrees to execute such a modification within fifteen (15) working days after receipt, and in the event of such a modification, the parties shall promptly negotiate in good faith to arrive at an adjustment within 180 days after the issuance of the modification or upon completion of forty percent (40%) of the work to be performed by the modification, whichever occurs earlier, in the contract price and the delivery schedule, if involved; or

- (3) Begin good faith negotiations leading to a bilateral modification of this contract which incorporates the engineering change(s) and such equitable adjustments as may be appropriate.

In any event, the Contractor's estimate of net increase/decrease in the contract price or net cost of change, and the bilateral modification of this contract making the equitable adjustment, shall be conclusively presumed to include an amount or factor for any and all delays and disruptions that may result from incorporating in this contract the engineering change(s) whether initiated and proposed by the Contractor or by the Contracting Officer, priced out by the modification.

Cost/Price Proposals and Certificate. In addition to any submittal of an initial or revised formal ECP, the Contractor agrees to submit, on request of the Contracting Officer, a proposal prepared in accordance with Table 15-2 of FAR 15.408 in as many copies as the Contracting Officer may reasonably require and a signed "Certificate of Current Cost or Pricing Data". Where DD Form 1692 is used the ECP Number from Block 5d of DD Form 1692 shall be entered on the first page of the proposal. The "Estimated Costs/Savings Under Contract" should agree with the net cost of the change in the proposal, and the "Effect on Production Delivery", shall be restated in the proposal.

- (e) **Equitable Adjustments for ECP Production.** In the event that an engineering change resulting from a formal ECP is incorporated in this contract, the equitable adjustment in contract price shall include an amount on account of the cost of the engineering and other work of the Contractor in preparing or revising the ECP, or both. In the event that such engineering change is not incorporated in this contract, the engineering and other work of the Contractor in preparing or revising the ECP, or both, shall be processed as if ordered by the Contracting Officer under the clause of the Contract Clause entitled "CHANGES -- FIXED-PRICE" FAR 52.243-1, (AUG 1987), "CHANGES --COST REIMBURSEMENT" FAR 52.243-2, (AUG 1987)," or "CHANGES --Time and Materials " FAR 52.243-3, (AUG 1987), and the Contractor shall be entitled to an equitable adjustment in contract price on account of such work but shall not be entitled to any adjustment in the delivery schedule; provided, however, that no adjustment in contract price shall be made with respect to any preliminary ECP or with respect to a formal ECP prepared and submitted by the Contractor which did not result from a requirement of the Contracting Officer or his representative designated by him in writing (i) to submit a formal ECP with respect to an engineering change proposed by the Government, (ii) to revise a formal ECP

H.58 ENGINEERING CHANGE PROPOSAL (ECP's) (continued)

- previously initiated, prepared and submitted by the Contractor or (iii) to submit a formal ECP as a result of a preliminary ECP, as provided for in paragraph (c) of this clause *except if the price of a Contractor initiated engineering change is \$15,000 or less, the change if ordered shall be made at no adjustment in contract price or cost depending on order type.* Failure to agree to such equitable adjustment in order price provided for in this paragraph (f) shall constitute a dispute concerning a question of fact within the meaning of the Section I clause entitled "DISPUTES".
- (f) Copies and Distribution of ECP's and Requests for Deviations and Waivers. Each ECP for an engineering change; each request for a major, critical, or minor deviation; and each request for a major, critical, or minor waiver prepared by the Contractor shall be submitted to the Contracting Officer.
 - (g) Necessity for Contract Modification. Notwithstanding any approvals or other action respecting an ECP, no engineering change shall be effective unless and until a modification to this order is executed as provided for in paragraph .c.(1), (2), and (3) or the Contracting Officer issues a modification to the order pursuant to the clauses of the Contract that is entitled "CHANGES -- FIXED-PRICE" FAR 52.243-1, (AUG 1987), "CHANGES --COST REIMBURSEMENT" FAR 52.243-2, (AUG 1987)," or "CHANGES --Time and Materials " FAR 52.243-3, (AUG 1987). Pending such a modification, the Contractor shall proceed diligently with order performance without regard to the effect of any such proposed engineering change. Notwithstanding any approvals or other action respecting a request for a major, critical, or minor deviation or waiver, no such deviation or waiver shall be effective unless and until granted or authorized by a modification to this order signed by the Contracting Officer; provided, however, that a minor deviation or waiver which the Contracting Officer finds does not change the Contractor's cost of performance, or that the decrease in such cost is not more than the administrative cost to the Government of processing the necessary modification, may be granted, authorized, and effective by and upon the signing or cosigning by the Contracting Officer of the Approval Block (27b) of DD Form 1694 or upon the signing or cosigning by the Contracting Officer of the Approval Block of the Contractor's existing form(s) that present data which is equivalent to that which is required by DD Form 1694. In this case, a copy of the signed DD Form 1694, or its equivalent, shall be transmitted to the Contractor. All such approved minor deviation and/or waivers, for each asset, shall be incorporated into the order by modification prior to Government inspection and acceptance of each asset.
 - (h) Value Engineering ECP's. This contract contains a Value Engineering clause, any cost reduction proposals submitted pursuant to that clause shall be submitted in accordance with Section I FAR clause 52.248-1 (March 1989).
 - (i) Saving Provision. Nothing contained in this clause shall be construed as:
 - (1) obligating the Government in any manner whatsoever to issue or approve any changes, deviations, or waivers which may be initiated or proposed by the Contractor, or any changes which may be initiated and proposed by the Contracting Officer as provided for in the Clause entitled . Contract Problem Identification Reports or

- (2) altering in any manner whatsoever the rights of either party under the Contract Clause entitled "CHANGES -- FIXED-PRICE" FAR 52.243-1 (AUG 1987), "CHANGES --COST REIMBURSEMENT" FAR 52.243-2, (AUG 1987)," or "CHANGES --Time and Materials " FAR 52.243-3, (AUG 1987)..

H.59 DELIVERY OF COMPLETED ASSETS

The term "Asset" as used in this clause refers to each asset to be constructed/manufactured and delivered under this contract.

- (a) The Asset shall not be presented for acceptance until it is determined by the Contracting Officer that the Contractor has satisfactorily carried out those tests /inspections and or trials for which the Contractor is responsible, including and that the Contractor has:
 - (1) corrected all Contractor responsible deficiencies discovered before completion of all, tests /inspections and or trials for which the Contractor is responsible, unless otherwise agreed to in writing by the Contracting Officer; and
 - (2) corrected all Contractor responsible deficiencies discovered after completion of tests /inspections and or trials for which the Contractor is responsible which are determined by the Contracting Officer to be necessary to avoid an adverse effect on the operational capability of the asset, or which are otherwise not accepted (latent defects, fraud, gross mistake amounting to fraud, written reservations, warranty, etc.).
- (b) The Contractor shall be responsible for scheduling a minimum interval between the satisfactory completion of test/inspection and trials, and delivery of the asset. The interval shall be defined by a delivery order. During this period the Contractor shall satisfactorily correct all Contractor responsible deficiencies, whether discovered before, during, or after completion of the preliminary acceptance. It is understood that correction of discrepancies is not the sole purpose of requiring the period, and therefore the period shall not be shortened or eliminated by the Contractor due to a lack of discrepancies to be corrected or any other reason without the government's assent.
- (c) Upon satisfactory completion of (1) acceptance trials and (2) of the correction of deficiencies as provided in paragraph (b) above the Contractor shall deliver the asset to the Government for preliminary acceptance.
- (d) Following acceptance, the Government may, pursuant to the warranties, during the warranty period, make the asset available to the Contractor, at the Contractor's plant, or require the Contractor to come to the asset, (i) for correction of defects noted at the time of acceptance, or which are discovered during the warranty period, and (ii) for the performance of any additional work required by change orders issued pursuant to the "Changes" clause of this contract prior to the acceptance and not theretofore performed. If the Government elects to make the asset available to the Contractor at the Contractor's plant or onboard the asset for the accomplishment of the above described work following acceptance, the Contractor agrees to accept the asset(s) and

- perform the work. If this repair period begins during but extends beyond the expiration of the warranty period, the Government may leave the ship at the Contractor's plant or return the ship thereto for the correction of defects not previously corrected and for the performance of any additional work required by change orders issued pursuant to the "Changes" clause of this contract prior to the preliminary acceptance and not theretofore performed.
- (e) The Contractor shall exercise reasonable care to protect the asset at all times until the delivery, and thereafter during such times as the ship is at the Contractor's plant during the warranty period or during the repair period if the latter extends beyond the expiration of the warranty period, except for periods of time when the asset is made available to the Government. During such periods, while the asset is at the Contractor's plant, the Contractor shall provide assistance to service the asset, and shall effect any correction of defects or performance of incomplete work, to the extent permitted or required by the Government.
 - (f) In accordance with the inspection provisions of the contract, all actions of the Government pursuant to this clause shall be performed in such a manner as to not unduly delay the work.
 - (g) The Government also reserves the right to correct deficiencies itself or have a third party make such corrections. The cost of said corrections shall be charged against the Contractor.